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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Appellate Case No. 2017-000266

C. Holmes,

Appellant/Petitioner,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

SUPPLEMENTAL APPENDIX

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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February 23, 2017

Cynthia Holmes
PO Box 187
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James Y. Becker, Esquire
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Manton M. Grier, Esquire
1201 Main Street
Suite 2200
Columbia SC 29201

Re: Cynthia Holmes v. Haynsworth (3)
Appellate Case No. 2017-000266

Dear Counsel:

Upon receipt and review of the notice of appeal filed in this case, the Court requests clarification from the parties as to whether this appeal falls under the category of filings prohibited by the Supreme Court's December 2, 2009 order. We have enclosed a copy of the order for your convenience. You must respond within ten days of the date of this letter or this appeal may be dismissed.

Very truly yours,


CLERK

The Supreme Court of South Carolina

J. Doe,¹

Petitioner,

v.

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents.

ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op. No. 2008-UP-596 (S.C. Ct. App. filed Oct. 17, 2008). The petition is denied.

However, this action is just one in a number of frivolous actions petitioner has filed relating to the revocation of her medical staff privileges at East Cooper Community Hospital *in 1997*.² Because we find petitioner has

¹ It is unclear why petitioner was allowed to proceed anonymously in this action. We note further that petitioner has at various times in other actions gone by the name Cynthia Holmes and Cynthia Collie. In order to avoid any confusion, we point out that J. Doe, Cynthia Holmes and Cynthia Collie are one and the same.

² A circuit court judge presiding over one of petitioner's lawsuits, found the following in a recent order imposing sanctions on petitioner.

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being assigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Holmes engaged in a lengthy, albeit fruitless, administrative appeal of the

Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her state court case against the Hospital. In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges. In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the [South Carolina Frivolous Proceedings] Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in absence of evidentiary support. Her tactics have been dilatory, vexatious, that is brought without sufficient grounds, oppressive and unreasonable.

Plaintiff[s] conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

engaged, and continues to engage in, vexatious litigation related to that issue, we hereby direct the Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice law in this state.³

³ In addition to the above captioned action, petitioner has filed notices of appeal and petitions for a writ of certiorari in the following actions:

J. Doe v. Manton Grier James Y. Becker and Haynsworth Sinkler Boyd, P. A., as successor to Sinkler & Boyd, P. A. (2002-CP-01-1448 and 2002-CP-40-3705)

Cynthia Holmes, M.D. v. Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker (2007-CP-10-1444)

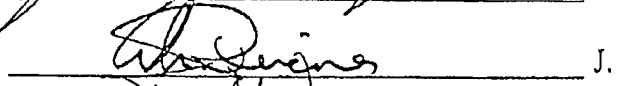
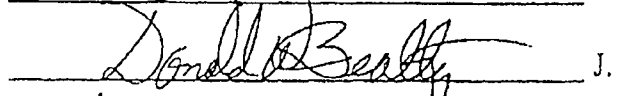
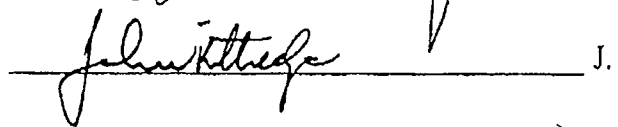
Cynthia Holmes, M.D. v. East Cooper Community Hospital, Inc.; Tenet Healthsystem Medical, Inc.; John Grady, M.D.; Paul Yantis, M.D. (2005-CP-10-5113)

The latter action is now pending in this Court. Only the appeal at issue has resulted in the issuance of an opinion by the Court of Appeals. The remaining appeals were dismissed by order of the Court of Appeals prior to the issuance of an opinion because the appeals were interlocutory. We note that in these matters, petitioner has filed numerous frivolous motions, indicating her lack of knowledge of or complete disregard for the appellate process.

We also note that petitioner has recently been sanctioned in two of these matters (2005-CP-10-5113 and 2007-CP-10-1444) by the circuit court. By order dated July 27, 2009, the circuit court ordered petitioner to pay \$90,000 in attorney's fees to opposing counsel based on her frivolous initiation and continuation of the proceeding. By order dated November 18, 2009, the circuit court, as noted in footnote 1 above, sanctioned petitioner and entered judgment against her in the amount of \$200,000, noting the amount was not as much as was justified by the facts.

IT IS SO ORDERED.


C. J.

J.

J.

J.

J.

Columbia, South Carolina

December 2, 2009

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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DIRECT DIAL NUMBER 803.540.7870
EMAIL mcaskey@hsblawfirm.com

February 28, 2017

VIA HAND DELIVERY
Jenny Abbot Kitchings
Clerk of Court
1200 Senate Street
Columbia, SC 29201

RE: Cynthia Holmes v. Haynsworth (3)
Appellate Case No. 2017-000266
HSB File: 04625.1439

RECEIVED

FEB 28 2017

SC Court of Appeals

Dear Ms. Kitchings:

I am writing in response to your letter dated February 23, 2017, requesting clarification as to whether Cynthia Holmes' ("Dr. Holmes") appeal falls under the category of filings prohibited by the Supreme Court's December 2, 2009 order prohibiting Clerks of Court in South Carolina from accepting further *pro se* filings from Dr. Holmes relating in any way to the revocation of her medical staff privileges at East Cooper Community Hospital ("East Cooper").

This appeal arises from orders entered in a malpractice case commenced on April 6, 2007 against Haynsworth Sinkler Boyd, Jamie Becker, and Manton Grier (collectively, the "Respondents"). The malpractice action arose from litigation Dr. Holmes commenced against East Cooper following the revocation of Dr. Holmes' medical staff privileges at the hospital. On Dr. Holmes' behalf, the Respondents unsuccessfully appealed for reinstatement of admitting privileges through East Cooper's administrative process and, later, filed a lawsuit in federal court. The relationship between Dr. Holmes and the Respondents deteriorated, and Dr. Holmes subsequently filed the malpractice action. After protracted litigation over Respondents' handling of her case against East Cooper, Dr. Holmes' claims against the Respondents were dismissed, and the trial court issued an order of sanctions against Dr. Holmes (the "Judgment"), which was affirmed by the South Carolina Supreme Court on June 4, 2014.

In November 2016, Respondents commenced formal efforts to collect the Judgment. As part of this effort, the Respondents filed their Verified Petition on January 3, 2017, in the Court of Common Pleas for Charleston County. Meanwhile, Dr. Holmes filed two motions for sanctions, a Rule 59(e) motion, a Rule 60 motion, and a motion to dismiss, all of which attempt to set aside the Judgment, reopen the malpractice action, and claim that the Respondents have acted fraudulently in trying to collect the Judgment. On February 9, 2017, the state court entered a judgment striking all

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

February 28, 2017

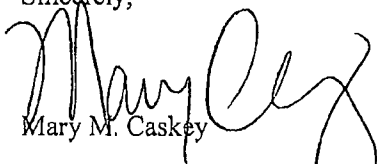
Page 2

motions filed by Dr. Holmes because she filed the motions *pro se*, in violation of the Supreme Court's December 2, 2009 order. In response, Dr. Holmes, seeking to appeal the state court's ruling, filed her *pro se* notice of appeal (the "Notice") with this Court. Copies of the motions filed are enclosed with this letter.

Like the various motions Dr. Holmes filed with the state court, this Notice falls within the scope contemplated by the December 2, 2009 order. As stated above, the Judgment was issued based on Dr. Holmes' conduct during the malpractice action, which itself arose from the litigation Dr. Holmes commenced against East Cooper. Moreover, all of the motions struck by the state court attempted to set aside the Judgment obtained in that action or claim that the Respondents acted fraudulently during their collection efforts based on Respondents' actions with respect to her claim against East Cooper. Therefore, this Notice is simply Dr. Holmes' latest attempt to re-litigate the malpractice action arising from the East Cooper litigation and frustrate the Respondents' attempts to collect the Judgment awarded in the malpractice action. Accordingly, the Notice falls within the purview of the December 2, 2009 order, and, being filed *pro se*, was filed in direct violation of the Supreme Court's order.

Please do not hesitate to contact me if you have any additional questions.

Sincerely,



Mary M. Caskey

cc: Cynthia Holmes (via U.S. Mail)

IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

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were false and/or misleading, defendants and/or defendants' counsel enticed this Honorable Court to rely on the material misstatements and thereby perpetrate fraud upon the Court. Moreover, Defendants blatantly and wrongfully attempt to "Judge shop" as another Circuit Court Judge has already signed the Order on January 3, 2017, and one Circuit Court Judge does not have the authority to overrule another Circuit Court Judge, thereby, voiding the unauthorized "Judge Shopping" second Order on January 13, 2017, due to, including but not limited to, lack of jurisdiction. Further, on information and belief, untrustworthy *pro se* Defendants, who are officers of the Court, materially failed, refused, and/or omitted disclosing the fact that they had presented the same Order to another Judge who had already signed it. Defendants have unclean hands. This motion is based on grounds of defendants and/or defendants' counsel's wrongdoing and material misstatements, including but not limited to defendants' unverified *pro se* petition pursuant to statutory and case law, affidavit(s), and evidence to be presented at the motion hearing on this matter.

This motion will be based on the pleadings, discovery, proposed orders, and/or other documents regarding wrongdoing by defendants and/or defendants' counsel and affidavit(s) as well as Memorandum of Law.

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

Dated 1/23/17


C. Holmes, M.D., J.D.
P.O. Box 187
Sullivans Island, SC
29482-0187

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 07-CP-10-1444

Plaintiff,

-V5-

NOTICE OF MOTION
AND
MOTION FOR SANCTIONS

Defendants.

RECEIVED

FEB 28 2017

SC Court of Appeals

TO: Defendants and Defendants' Counsel

PLEASE TAKE NOTICE that the plaintiff will move before the Presiding Judge, Court of Common Pleas, Ninth Judicial Circuit, Charleston, South Carolina, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an order for sanctions as to defendants and defendants' counsel pursuant to Rule 11, SCRCP, pursuant to S.C. Code Section 15-36-10, and/or pursuant to this Honorable Court's inherent authority regarding defendants' and/or defendants' counsel's false statements, misrepresentations, and *pro se* unverified petition made to this Honorable Court regarding order entered in this matter on January 3, 2016. Defendants and/or defendants' counsel knew or should have known the falsity of the statements. Despite knowing the statements were false and/or misleading, defendants and/or defendants' counsel enticed this

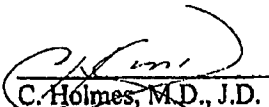
Honorable Court to rely on the material misstatements and thereby perpetrate fraud upon the Court. This motion is based on grounds of defendants and/or defendants' counsel's wrongdoing and material misstatements, including but not limited to defendants' unverified *pro se* petition pursuant to statutory and case law, affidavit(s), and evidence to be presented at the motion hearing on this matter.

This motion will be based on the pleadings, discovery, proposed orders, and/or other documents regarding wrongdoing by defendants and/or defendants' counsel and affidavit(s) as well as Memorandum of Law.

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

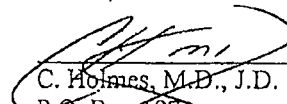
Dated 1/12/17


C. Holmes, M.D., J.D.
P.O. Box 187
Sullivan's Island, SC
29482-0187

For the foregoing reasons and for substantial justice affecting substantial rights, it is respectfully requested that this Court grant this motion with abeyance pending resolution.

Respectfully submitted,

Dated 12/28/14


C. Holmes, M.D., J.D.
P.O. Box 187
Sullivan's Island, SC
29482-0187

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

J. Doe(CHolmes),

Plaintiff,

-vs-

Manton Grier, James Y.
Becker, and Haynsworth
Sinkler Boyd, P.A., as
successor to Sinkler &
Boyd, P.A.

Defendants.

)IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO.: 07-CP-10-1444

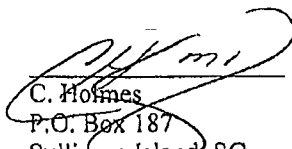
) CERTIFICATE OF SERVICE

FILED
2016 DEC 30 PM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The undersigned hereby certifies that a copy of the foregoing motion was served upon the attorney for all Defendants on this date by deposit in the U.S. Mail with sufficient postage thereon to ensure prompt delivery as follows:

Mary Caskey
c/o HSB, PA
1201 Main St. - 22nd flr.
Columbia, SC 29201

Dated 12/28/14


C. Holmes

P.O. Box 187
Sullivans Island, SC
29482-0187
843.883.3010

Rule 60, SCRPC - Relief From Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Grounds for the motion include, but are not limited to, those which follow. By analogy, under the Federal Rules of Civil Procedure, Rule 60 may be used to reconsider legal issues, and Rule 60(b)(1) specifically provides that the court may relieve a party from an order for reasons of its own mistake or inadvertence. *See Kingvision Pay-per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 350 (9th Cir. 1999). "The word 'mistake' in Rule 60(b) has been read to include mistakes by the court. *See, e.g., Tarkington v. United States Lines Co.*, 222 F.2d 358 (2d Cir. 1955)." *McQuatters v. Town of Irmo Corp.* (D.S.C., 2012), Case No. 3:10-1375-CMC-PJG, January 3, 2012. South Carolina Rule of Civil Procedure 60(b)(1) provides that upon motion, the court may relieve a party from a final judgment for "mistake, inadvertence, surprise or excusable neglect." *Thompson v. Hammond*, 299 S.C. 116, 382 S.E.2d 900 (S.C., 1988). As one example, application of the improper legal standard under the inapplicable revised FCPSA is a mistake warranting

reconsideration and relief. *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App. 2011) In addition, under Rule 60(b)(2), SCRCP, there is newly discovered evidence supporting this motion which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), SCRCP. Further, there is misrepresentation, and/or other misconduct of an adverse party warranting relief under Rule 60(b)(3). As just one example, despite plaintiff's timely objections, defendants wrongfully misrepresented that the wrong statute applied. Moreover, the revised FCPSA is pending constitutional challenge on its face and as applied. To the extent the judgment is based on, adversely affected by, and/or prejudiced by that unconstitutional statute, the judgment is void under Rule 60(b)(4), SCRCP. In addition, by analogy, the recent case of *Conquista Consultoria E Assessoria Empresarial Ltda v. Iguacu, Inc.*, provides, "It has long been the case that 'the jurisdiction of the court depends upon the state of things at the time of the action brought.' *Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 570 (2004) (quoting *Mollan v. Torrance*, 9 Wheat 537, 539, 6 L.Ed. 154 (1880))." *Conquista Consultoria E Assessoria Empresarial Ltda v. Iguacu, Inc.* (N.D. Cal., 2015), Case No. 11-cv-00602-RS, July 6, 2015. As such, controlling precedent in *Southeastern Site Prep* confirms that the revised FCPSA is inapplicable which resulted in error of law and/or lack of subject matter jurisdiction, thereby voiding the judgment. *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App. 2011). Pursuant to Rule 60(b)(5), SCRCP, a prior judgment upon which the judgment herein is based has been reversed or otherwise vacated which justifies Rule 60 relief, including but not limited to the following. Over plaintiff's timely objections, defendants wrongfully induced this

Honorable Court to rely on a prior sanctions order in unrelated matter which was not final and which was then pending appeal. Plaintiff is prejudiced because controlling precedent has now overturned that order. Accordingly, that prior wrongful revised FCPSA order erroneously formed a basis, if not the basis, for the order herein, thereby warranting relief under Rule 60. Finally, for substantial justice affecting substantial rights, including but not limited to the reasons stated, it is no longer equitable that the judgment should have prospective application Rule 60(b)(5), SCRPC.

These are matters of public importance, including but not limited to, due process and Justice Hearn's failure to recuse after wrongfully denying the plaintiff's right of direct appeal in the Court of Appeals based on the wrongful sanctions, monetary and non-monetary, in the appeal of that very order. Justice Hearn, as the participating former Court of Appeals judge, was thereby conflicted but wrongfully denied motion to recuse without comment and without enough specificity for meaningful judicial review. Moreover, the constitutionality of the revised S.C. Code Ann. Section 15-36-10 is pending appeal. That statute incorporates a reasonable attorney standard, which is not reasonable notice to the layperson or affected parties. Further, the revised S.C. Code Ann. Section 15-36-10 is constitutionally flawed including deprivation of right to full and fair hearing at trial by jury. See *Pond Place Partners, Inc., v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (the trial court found that a trial on the frivolous proceedings depended on the resolution of the underlying legal cause of action **after appeal**). "It has been decided by this court too often to require citation of the cases that a plaintiff cannot, by framing his complaint so that his action would, under the old procedure, be one cognizable only by a court of equity, select the forum in which the issue shall be tried, and thereby defeat a defendant's constitutional

right of trial by jury." *Southern Ry v. Howell*, 89 S.C. 391, 71 S.E. 972 (S.C., 1911).

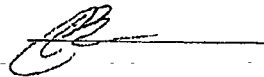
See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

This Motion is based on statutory law, case law, and Constitutional law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence admitted at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned respectfully requests relief pursuant to Rule 60, SCRPC.

Respectfully submitted,

Dated August 3, 2015.

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line.

This case is a suit for professional negligence wherein the Federal District Court ruled that Defendants wrongfully failed to timely appeal Defendant's negligent loss of injunction resulting in damages, thereby committing malpractice. See attached Federal District Court Order.

At trial, Defendants failed to extend professional courtesy for Plaintiff's trial counsel, who was in out-of-state court, to appear. The trial proceeded at Defendant's self-serving insistence without opposing trial counsel. At trial, Professor John Freeman testified under oath before the jury that what Defendants did when they threatened to prejudice the case in order to extract fees was "unethical. I consider that would be a form of blackmail or extortion and criminal in South Carolina to do that." See attached Trial Transcript, excerpt of Professor John Freeman's testimony. A jury could and should reasonably find that the negligent and/or criminal acts are a breach of the standard of care. Despite the obvious questions of fact, the jury was denied the right to find the facts when directed verdict was wrongfully granted by a retired judge. Because retired judges have no support staff, the retired judge essentially allowed Malpractice Defendants to write their own order. Consequently, that order does not reflect the record or reality. Transcript available upon request. Moreover, Defendants materially fail to disclose differing findings by the appellate courts. See attached Transcript Excerpt of Oral Argument by the Physician's Trial Counsel who was unfairly denied the opportunity to appear at trial.

Thereafter, Defendants misrepresented that the wrong statute applied and filed a motion for sanctions. But for the unconstitutional retroactive application of the amended S.C. Code Section 15-36-10, we would not be here. Any well-trained Physician would and should adamantly object.

The South Carolina Rules of Court shall be construed to do substantial justice. Though no deadline was imminent, Defendants chose to mail a copy of the *pro se*, so-called verified petition to the Physician on December 19, 2016, just in time for the Christmas Holidays with family and friends. Defendants, bless their hearts, are real sweethearts. Defendant's *pro se* petition does not comply with the South Carolina Rules of Court. Moreover, the *pro se*, so-called verified petition is disputed,

contains material misstatements of fact, and is not proper, not itemized, and not verified. Strict compliance with the South Carolina Rules of Civil Procedure, statutory, and case law is required for summary application. Defendants did not counterclaim thereby waiving it, if any. The Physician is not the Defendant. The matter herein is incidental to the underlying claim. Defendants have unclean hands, and the Plaintiff respectfully submits Defendant's *pro se*, so-called verified petition should be dismissed or stricken.

I. One Circuit Judge has no power to change, alter, review, revise or reverse the action of another Circuit Judge

Rule 43(1), SCRPC, provides, "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." "This rule results from the nature of the case and well-established principles. Its propriety is so obvious that it has not been thought necessary to enforce it by constitutional prohibition or express enactment, but for the sake of symmetry and convenience in practice it has been embodied in our 61st rule (*now Rule 43(1), SCRPC*) of the Circuit Courts, which declares that 'if any application for an order be made to any judge, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application upon the same state of facts, shall be made to any other judge; and if upon such subsequent application, any order be made, it shall be revoked'...(A) judgment of the Court of Common Pleas... must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one Circuit judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. One Circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit." *Steele v. Charlotte, Columbia & Augusta R.R. Co.*, 14 S.C. 324 (S.C., 1880) (emphasis

supplied); *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947). Defendants attempt to “Judge Shop.” Further, on information and belief, untrustworthy *pro se* Defendants, who are officers of the Court, materially failed, refused, and/or omitted disclosing the fact that the exact same Order on the exact same facts had already been adjudicated by another Circuit Court Judge. Untrustworthy *pro se* Defendants have unclean hands. Accordingly, the order entered January 18, 2017, “shall be revoked.” See *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 304 S.E.2d 546, 547 (1986) (“One Circuit Court Judge does not have the authority to set aside the order of another.”).

II. The failure to support the rule to show cause by verified petition is a fatal defect.

The failure to support the rule to show cause by verified petition is a fatal defect. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). See sample Verification attached. Though captioned as “verified petition,” defendant’s *pro se* petition does not contain a verification and does not comply with the South Carolina Rules of Court or the Rules of Civil Procedure. Pursuant to Rule 9(i), SCRCP, verification of account is required and Rule 11(c), SCRCP, specifies that the verification or affidavit shall be sworn to or affirmed before an officer authorized to administer oaths. *BB&T v. Fleming*, 360 S.C. 341, 601 S.E.2d 540 (2004). Further, when a motion is to be supported by affidavit or sworn itemized statement, it “SHALL be served with the motion.” Rule 6(d), SCRCP. Moreover, the *pro se* petition is false and is disputed. It contains material misstatements of fact and is not itemized, verified, or proper. Strict compliance with the rules and statutes is required for summary application. The plaintiff respectfully submits defendant’s *pro se*, so-called verified petition should be dismissed or stricken.

III. Defendants proposed order entered January 3, 2017, is void on its face because Defendants have no appellate jurisdiction or authority to deny any Plaintiff access to the South Carolina Court of Appeals and application of the rule of law.

Defendant's proposed order is void on its face because Defendants have no appellate jurisdiction or authority to deny any Plaintiff access to the South Carolina Court of Appeals. The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

[T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal et al., *Appellate Practice in South Carolina* (3d ed. 2016), p. 11. Defendant's brazen assertion that Defendants are somehow exempt from the South Carolina Appellate Court Rules and the South Carolina Court of Appeals characterizes the way Defendants have proceeded in this professional negligence action all along, i.e., the rules do not apply to them. Defendant's *pro se* unverified petition should be dismissed or stricken.

IV. There is no jurisdiction due to pending Rule 60, SCRPC, Motion.

The pending Motion Pursuant to Rule 60, SCRPC, was filed before Defendant's unverified, false petition and is pertinent thereto. Pursuant to Rule 79(e), SCRPC, Petitioner requests hearing on that motion. There is no jurisdiction due to pending Rule 60, SCRPC, Motion. Even assuming jurisdiction, resolution of the Rule 60, SCRPC, Motion as a prerequisite is reasonable. *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

V. Summary application is not proper because this matter is incidental to the case and does not constitute a traditional money judgment.

This matter is incidental to the case and does not constitute a traditional money judgment. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The underlying claim ended in wrongful directed verdict with no money judgment. Summary application applies to traditional judgments where the party has been afforded the right to trial by jury. "A summary application by rule to show cause is not allowed in that class of cases....(I)t must be of a more formal character than the present rule (to show cause), such as would admit of a formal mode of trying any issue of fact that might arise in such proceeding." *Smith v. Lake*, 5 S.C. 341 (S.C., 1874) (emphasis supplied). Defendants did not counterclaim, thereby waiving any. The Physician is not the Defendant, and the matter herein is incidental. Defendants *pro se*, unverified, false petition should be dismissed.

VI. A novel question is raised of constitutionality of summary application by rule to show cause to amended S.C. Code Section 15-36-10 and/or incidental matters.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of the right to trial by jury. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, deprivation of right to full and fair hearing at trial by jury, deprivation of right to neutral fact-finder where the scales of justice are tipped in favor of untrustworthy Defendants who are officers of the court, and the amended S.C. Code Section 15-36-10 statute's reasonable attorney standard is not reasonable notice to the layperson or affected parties. Accordingly, the statute is null and void, and Defendants summary application should be dismissed. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

VII. A novel question is raised of constitutionality of summary application by rule to show cause in amended S.C. Code Section 15-36-10 and/or incidental matters due to denial of due process and lack of determination on ability to pay.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of due process including but not limited to failure to determine reasonableness and ability to pay. See

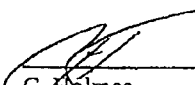
Turner v. Rogers, 564 U.S. 431 (2011). The Physician asserts there was no counterclaim, and even assuming there was, Defendants waived it. The Physician is not the Defendant. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, denial of due process and failure to determine reasonableness and ability to pay. Accordingly, summary application by rule to show cause is not applicable and/or is unconstitutional and should be dismissed. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

CONCLUSION

This Motion is based on constitutional (federal and State), statutory, and case law. This Motion will be supported by the pleadings, affidavit(s) submitted in support of the motion, other evidence at the hearing, and memorandum to be submitted to the Court and opposing counsel under separate filing.

For the foregoing reasons and for substantial justice affecting substantial rights, the undersigned requests that defendants comply with the Rules of Court prohibiting ex parte contacts by forwarding hard copy of any and all communication with the Court regarding this matter whether electronic, fax, email, verbal, or other, and the plaintiff respectfully requests this Honorable Court grant this motion.

Respectfully submitted,



C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

Bank of America

Cashier's Check

No. 0912453

30-1/1140

40-14-0003B 7-1999

Date

CHARLESTON

CHARLESTON-200 MEETING STREET

02-01-00

Pay To The
Order Of

WILL DAVYD

If this check is not
returned for
cancellation by the
remitter or presented
for payment by the
payee or an endorsee
within one year after
its date, it will be
subject to a
nonrefundable
dominance fee of \$5.00
per month thereafter.

FIFTY THREE THOUSAND AND 00/100

NOT VALID IF OVER \$43,900.00

*****43,000.00**

Dollars

For

72900 004 071129 02-01-00

12:57 OFFICIAL CK SALE

\$43,000.00 Non Negotiable

Authorized Signature

Customer Copy

Retain for your records

001641000116

Bank of America, N.A.
San Antonio, Texas

CYNTHIA HOLMES MD
Remitter (Purchased By)

004071129

ENDORSE CHECK HERE

X For Deposit Only
Acct of SINKLER & BOYD, P.A.
by Bill Boyd

FOR DEPOSIT ONLY
SINKLER & BOYD, P.A.

DEPOSITORY BANK ENDORSEMENT

0315423

ENDORSE CHECK HERE

☒ For Deposit Only

Acct of SINKLER & Boyd, P.A.

by Bill Boyd

FOR DEPOSIT ONLY

Boyd P.A.

SINKLER & BOYD P.A.

DEPOSITORY BANK ENDORSEMENT

STATE OF SOUTH CAROLINA

County of _____

VERIFICATION

I, _____ being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this _____ day of _____

(L.S.)

Notary Public

My Commission Expires: _____

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LARRY W. PROPPS, CLERK
CHARLESTON, SC

JUN - 2 2000 *elcam*

J. Doe, M.D.,

Plaintiff,

v.

C.A. # 2:99-833-23

Tenet HealthSystem Medical, Inc.
and East Cooper Community
Hospital, Inc.,

Defendants.

ORDER

This matter is before the court upon plaintiff's motion for an injunction pending appeal under Federal Rule of Civil Procedure 62 (c). For the following reasons, the motion is denied.

Plaintiff, Cynthia Holmes, M.D., is a physician who had admitting privileges at the defendant Hospital. Upon the Hospital's termination of her admitting privileges, Dr. Holmes brought this action for both injunctive relief and monetary damages asserting violations of federal anti-trust laws and state law claims. On November 22, 1999, this court enjoined the Hospital from terminating Dr. Holmes' privileges. Thereafter, the defendants filed a motion to dissolve the preliminary injunction on the grounds that Dr. Holmes had failed to abide by the Scheduling Order and had failed to comply with the rules of discovery. Furthermore, the alleged harm suffered by her current patients had not materialized.

On January 25, 2000, the court granted the defendants' motion to dissolve the preliminary injunction after holding a hearing on the matter. Dr. Holmes did not appeal the court's order dissolving the injunction. Soon thereafter, the defendants moved for summary judgment. After considering the briefs filed, both in support of and in opposition to the motion, this court granted the defendants' motion for summary judgment as to all federal claims, and dismissed without prejudice

over

the supplemental state law claims on April 17, 2000. Plaintiff has now appealed this court's Order. Simultaneous with the filing of her notice of appeal, plaintiff filed this motion for an injunction pending appeal pursuant to Rule 62 (c).¹

Rule 62 (c) authorizes the court to suspend, modify, restore, or grant an injunction during the pendency of an appeal. Fed. R. Civ. P. 62 (c) "This subdivision . . . codifies the inherent power of courts to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment." Charles A. Wright, Arthur R. Miller, Mary K. Kane, 11 Federal Practice and Procedure § 2904 (2d ed 1995). However, due to the fact that Dr. Holmes did not seek such relief upon the dissolution of the injunction back in January, this court declines to restore the injunction at this time. If Dr. Holmes had appealed the order dissolving the injunction, such a motion may have been appropriate at that time. However, the status quo of this case since January is the absence of any injunction against the defendants. Therefore, the motion is denied.

It is therefore,

ORDERED, for the foregoing reasons, that the Plaintiff's motion for an injunction pending appeal is DENIED.

AND IT IS SO ORDERED.


PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
June 1, 2000

¹ Plaintiff also referenced the provision for injunctive relief under Clayton Act cases as a basis for her request. See 15 U.S.C. § 26. However, section 26 only provides injunctive relief as a remedy for antitrust violations. It has no applicability to the relief sought at this stage of the plaintiff's case.

COURT OF COMMON PLEAS
07-DR-10-1444

ORIGINAL

PARTIAL
TRANSCRIPT OF RECORD

TESTIMONY OF:
JOHN P. FREEMAN

JUNE 11, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

A P P E A R A N C E S:

CYNTHIA HOLMES, ESQUIRE
APPEARING PRO SE

JOHN S. WILKERSON, III, ESQUIRE
RICHARD S. DUKES, JR, ESQUIRE
ATTORNEYS FOR DEFENDANT

VIVIAN CROSS,
SHARON JONES,
OFFICIAL COURT REPORTERS

THE COURT: THIS IS NOT -- THIS IS NOT YOUR TIME TO TESTIFY. THAT HAS ALREADY PASSED. YOU NEED TO ASK HIM SOME QUESTIONS.

BY MS. HOLMES:

Q ARE -- ARE YOU AWARE THAT THAT IS THE DAY OF THE LOSS OF THE PRELIMINARY INJUNCTION?

A THE DATE OF THE ADDENDUM?

Q ARE YOU AWARE THAT THAT -- THAT DEFENDANTS HAVE TESTIFIED THAT IT WAS GENERATED ON THE DATE OF THE -- OR LET'S SAY THE MODIFICATION WAS MADE ON THE DATE OF THE HEARING.

A OKAY.

Q ARE YOU AWARE THAT DEFENDANT THREATENED TO PREJUDICE THE CASE IN ORDER TO EXTRACT---

MR. DUKES: YOUR HONOR---

THE COURT: THIS IS NOT -- THIS IS NOT TESTIMONY. YOU DIDN'T TESTIFY TO ANYTHING LIKE THAT.

THE WITNESS: I'M NOT AWARE OF---

MR. DUKES: NO---

THE COURT: YOU DON'T HAVE TO ANSWER THAT.

BY MS. HOLMES:

Q DO YOU BELIEVE THAT THREATENING A CASE IN ORDER TO -- THREATENING TO PREJUDICE A CASE IN ORDER TO EXTRACT FEES IS -- COMPLIES WITH THE STANDARD OF CARE?

A NO, MA'AM. LET ME BE REAL CLEAR ON THIS. I --

JOHN FREEMAN -- CROSS BY MS. HOLMES

87

1 I CONSIDER THAT WOULD BE UNETHICAL. I CONSIDER THAT WOULD
2 BE A FORM OF BLACKMAIL OR EXTORTION AND CRIMINAL IN SOUTH
3 CAROLINA TO DO THAT. AND I -- I -- THAT'S MY ANSWER.

C. Holmes, M.D.,)
Appellant,)
vs.)
Haynesworth Sinkler Boyd, P.A.,)
successor to Sinkler & Boyd, P.A.,)
Manton Grier, and James Y. Becker,)
Respondents.)

LOWER COURT NO. 02-CP-10-1448
AND AFTER CHANGE OF VENUE NO. 07-CP-10-1444
APPELLATE CASE NO. 2010 - 154986

TRANSCRIPT OF APPEAL HEARING

BEFORE THE SOUTH CAROLINA SUPREME COURT
THE HONORABLE JEAN HOEFER TOAL, CHIEF JUSTICE
THE HONORABLE COSTA M. PLEICONES, JUSTICE
THE HONORABLE KAYE G. HEARN, JUSTICE
THE HONORABLE JOHN W. KITTREDGE, JUSTICE
THE HONORABLE DONALD W. BEATTY, JUSTICE

1 CHALMERS JOHNSON: Thank you. Chief Justice Toal,
2 Justices of the Supreme Court, my name is Chalmers Johnson.
3 I'm here, um, representing Dr. Cynthia Holmes today. In this
4 appeal, we're asking, uh, that the court overturn an order
5 which granted a directed verdict against her on claims of
6 professional negligence and others that were against her
7 former attorneys, Mr. Grier, Mr. Becker, and Haynesworth, um,
8 Sinkler & Boyd. We'll also be addressing an order which
9 granted sanctions after that trial against Dr. Holmes for
10 instituting a frivolous lawsuit.

11

12 CHIEF JUSTICE JEAN TOAL: Go ahead.

13

14 CHALMERS JOHNSON: Thank you, Your Honor. Directed
15 verdict should not have been granted in this case. Um, I know
16 we have a huge record on appeal, and just a -- a laundry list
17 of issues, which I hate to do in any appeal, but if I do
18 nothing else today, it's my goal to focus your attention on
19 fifty pages of the record on appeal, and on one piece of extra
20 testimony from the trial. The particular pages that I hope
21 that you will pay attention to are pages 1509 to 1560. These
22 fifty pages, which are exhibits from the trial, present a
23 succinct chronology of events and provide evidence of a duty,
24 a negligent breach of that duty, damages, and causation.
25

1 JUSTICE JOHN KITTREDGE: I don't want to interrupt the
2 flow of your argument, Mr. Johnson, but why isn't this case
3 over on the statute of limitations issue?

4

5 CHALMERS JOHNSON: Your Honor, the statute of limitations
6 issue only applies to the two individual defendants. So even
7 if it was found that they were not ---

8

9 JUSTICE JOHN KITTREDGE: Well, as to them?

10

11 CHALMERS JOHNSON: Okay. As to them, Your Honor, our
12 argument is that they availed themselves of the court to the
13 point where they should have -- the court should have
14 considered to have personal jurisdiction over them within the
15 time period of the ---

16

17 JUSTICE JOHN KITTREDGE: So ---

18

19 CHALMERS JOHNSON: --- statute of limitations.

20

21 JUSTICE JOHN KITTREDGE: So coming -- coming to court and
22 submitting to the jurisdiction of the court waives a party's
23 ability to assert affirmative defenses?

24

25 CHALMERS JOHNSON: It doesn't necessarily waive the right

1 to af-, assert affirmative defenses, Your Honor, but as to
2 personal jurisdiction and when the court has personal
3 jurisdiction, I don't think that South Carolina recognizes a
4 special appearance, and especially when you go so far as to
5 actually defend the case at trial and obtain a directed
6 verdict. You've certainly availed yourself of the court,
7 shown up, and, um, evidenced your receipt of notice of the
8 case and your time to prepare.

9

10 JUSTICE JOHN KITTREDGE: I -- I understand that in the
11 context of being able to subsequently assert a jurisdictional
12 challenge, but I don't understand how an appearance forecloses
13 a party's ability, uh, to assert affirmative defenses,
14 including statute of limitations.

15

16 CHALMERS JOHNSON: Uh, it wouldn't, Your Honor. The only
17 way -- the only argument I have on that is to come at it from
18 a personal jurisdiction standpoint, and I think you put your
19 finger right on it; I won't belabor the point any. Um, the
20 best argument I can come up with is that they've availed
21 themselves of the court. I think that the court had personal
22 jurisdiction over them from the very beginning, which would
23 have been within the statute of limitations. Um, and that's --
24 that's how I come at that, Your Honor.

25

1 CHIEF JUSTICE JEAN TOAL: Let's go to what you would like
2 us to focus on, pages, uh, 1509 to 1560.

3

4 CHALMERS JOHNSON: Yes, Your Honor.

5

6 CHIEF JUSTICE JEAN TOAL: They include, as it looks like
7 to me from just a brief look, the initial engagement letter,
8 uh, the addenda, uh, uh, to that engagement letter, uh, and
9 certain other pleadings surrounding the order of Judge Duffy.

10

11 CHALMERS JOHNSON: Yes, Your Honor.

12

13 CHIEF JUSTICE JEAN TOAL: Uh, is that correct?

14

15 CHALMERS JOHNSON: That's correct, Your Honor.

16

17 CHIEF JUSTICE JEAN TOAL: Alright, sir. Uh, go forward
18 and tell us what is succor about those ---

19

20 CHALMERS JOHNSON: Thank you.

21

22 CHIEF JUSTICE JEAN TOAL: --- documents.

23

24 CHALMERS JOHNSON: Here's what I want to focus on. This
25 case is -- you know -- we're actually in front of you in this

1 very case later this year, I believe, or next year. Um, it
2 has involved a lengthy process, with lots of different things
3 happening. This case, if we want to actually make a case that
4 Judge Houston should have seen, was about the injunction. Dr.
5 Holmes was able to, um, obtain an injunction, which allowed
6 her to continue with doing surgeries.

7

8 JUSTICE KAYE HEARN: And she did no surgery during the
9 course of that injunction, isn't that correct?

10

11 CHALMERS JOHNSON: Correct, Your Honor. The injunction was
12 granted at the end of November, and the, uh, injunction was
13 reversed in January. So ---

14

15 CHIEF JUSTICE JEAN TOAL: And, of course, why, the
16 standard for keeping such an injunction in place, uh, is both
17 the, uh, harm that might ensue, uh, as, uh, before the case is
18 tried, as well as likelihood of success on the merits, and I
19 guess that's where, if you can get past the fact that, uh,
20 she's, uh, not demonstrated that her practice was really hurt
21 because she didn't admit anybody, uh, you've got the, uh,
22 ruling by Judge Duffy on the merits, uh, affirmed by the
23 Fourth Circuit, cert declined by the Supreme Court, and then
24 fully explicated again by Judge Pieper in his order dismissing
25 the antitrust, uh, uh, uh, and allied, uh, causes, uh, in

1 State Court. Those are the causes -- those two federal causes
2 are those that would support that injunction. Uh, so if on
3 the merits, according to the various judges I recited, she is
4 not entitled to any relief, then what Haynesworth, Becker, and
5 Grier did or did not do in pursuing the preliminary injunction
6 really doesn't make any difference, does it?

7
8 CHALMERS JOHNSON: I think it makes -- I think that is
9 the case, Your Honor. Uh, not -- not that you're correct, but
10 I think it is our case that she lost the injunction and her
11 damages ensued from that. You can ---

12
13 CHIEF JUSTICE JEAN TOAL: Well, I understand that, but
14 the -- the -- it's not just that simple. Just because she
15 lost the injunction doesn't mean she would be entitled to
16 damage had she suffered any damages, and that's another big
17 issue, as to whether this record discloses any damages, uh,
18 uh, since she didn't admit any patients during the time she
19 definitely had the injunction. Uh, it's arguable that she
20 suffered no damages. Uh, if that -- but beyond all that, if
21 she had suffered some damages in the sense that, uh, she had
22 lost the opportunity to admit patients, if she wasn't entitled
23 to the injunction in the first instance, how in the world does
24 it make any difference that the preliminary injunction was
25 dissolved?

1

2 CHALMERS JOHNSON: She was entitled to the injunction in
3 the first instance. The judge ---

4

5 CHIEF JUSTICE JEAN TOAL: She really wasn't. Uh, that's
6 the ruling that all the federal courts have made. The
7 entitlement is not just because of, uh, harm, it's because you
8 have a likelihood of success on the merits. As it develops,
9 she had no likelihood of success on the merits.

10

11 CHALMERS JOHNSON: Your Honor, ---

12

13 CHIEF JUSTICE JEAN TOAL: None.

14

15 CHALMERS JOHNSON: Your Honor, I -- I respectfully
16 disagree. The federal court only granted partial summary
17 judgment. It dismissed the remainder of her state claims.

18

19 CHIEF JUSTICE JEAN TOAL: The state court claims are not
20 involved with this preliminary injunction. The preliminary
21 injunction is purely involved and is purely bottomed on the
22 federal action, what you're talking about.

23

24 CHALMERS JOHNSON: Right, Your Honor. And at the end of
25 this, um, set of papers, you'll see Judge Duffy, um, correctly

1 recognizes that -- I mean, this injunction had only been in
2 place for about six or seven weeks. He collec-, correctly
3 recognizes that Dr. Holmes had four surgeries scheduled for
4 the next, uh, month or two, and he tell-, p-, tells her, "You
5 better cancel your surgeries and do something about it." On
6 the very next day, she gets her letter from the hospital
7 cancelling all four surgeries.

8
9 CHIEF JUSTICE JEAN TOAL: Well, that -- of course that is
10 what happened, but, again, what he also tells her very
11 definitively is that she was never entitled to the injunction
12 to begin with because her entitlement has to be bottomed on
13 likelihood of success, and she did not have a viable cause of
14 action for the federal causes.

15
16 CHALMERS JOHNSON: And, Your Honor, that's so, but she
17 would have ---

18
19 CHIEF JUSTICE JEAN TOAL: Well, if that's so, end of
20 conversation.

21
22 CHALMERS JOHNSON: She would have had the four surgeries
23 done and collected the money for them. I think she has
24 damages.

25

1 CHIEF JUSTICE JEAN TOAL: No, sir. That -- the fact that
2 she might or might not have is not the inquiry. The inquiry
3 on damages is going to be whether she was entitled to it, not
4 whether she could have gotten a windfall if it had stayed in
5 place. Her entitlement is based on the legitimacy of that
6 federal action.

7
8 CHALMERS JOHNSON: Your Honor, I think her entitlement to
9 perform the surgeries was based on the fact that the judge did
10 grant her the injunction. The reason that the injunction was
11 lost is why this case shouldn't have been thrown out.

12
13 CHIEF JUSTICE JEAN TOAL: Well, I -- I think we
14 understand your position on that.

15
16 JUSTICE JOHN KITTREDGE: Let me -- let me use that
17 comment to ask you about this professional negligence claim.
18 What should her attorneys have done differently? How should
19 they have performed differently that would have likely changed
20 the results?

21
22 CHALMERS JOHNSON: They should have spent their time
23 between the injunction and the loss of the injunction
24 responding to discovery, which was already overdue at the time
25 the discov-, the injunction was granted, and listening to

1 Judge Duffy, who told them that they better stick to the
2 scheduling order, which they didn't, and that's why Judge
3 Duffy undid the injunction, and they should not have generated
4 thirty-five pages of dickering with their client about fee
5 renegotiations, including ---

6
7 CHIEF JUSTICE JEAN TOAL: Well, she's the one that
8 generated that by taking the completely unsubstantiated
9 position by anything that's in this record that she had an
10 entitlement to a contingent fee arrangement. That was the
11 source of the disputation, and every piece of written material
12 here, except a letter she sent saying, uh, uh, that she had
13 received a phone conversation different, which is just another
14 piece of self-serving information on her part. There is no
15 independent writing between the parties that supports anything
16 other than a fee-based arrangement.

17
18 CHALMERS JOHNSON: Actually, Your Honor, uh, one of those
19 letters that I have referred you to, Haynesworth actually
20 offers a contingency fee agreement.

21
22 CHIEF JUSTICE JEAN TOAL: Which one is that? Show me
23 specifically in the record.

24
25 CHALMERS JOHNSON: Let me find it, Your Honor. It is

1 letter #3, January 10th, 2000. Page 1523. In this one,
2 Haynesworth asked for \$3,000 in advance for costs, \$40,000
3 advance fee for attorneys fees that will cover until the end
4 of trial, ---

5
6 CHIEF JUSTICE JEAN TOAL: No, the -- that \$43,000 was not
7 advanced -- covered the end of trial. They had suffered a
8 good deal of lost fees that she had never paid them, and the
9 \$43,000, as I understand it, was an attempt to calculate what
10 was past due, and they said, "We will take this \$43,000, we
11 will not insist in anything more until the end of trial," but
12 the arrangement is a fee-based one. Where in this letter does
13 it talk about contingent fees?

14
15 CHALMERS JOHNSON: They mention in the letter, on page
16 1523, they offer -- if the case is -- if they recover over
17 \$150,000, Haynesworth wants twenty percent of that. So they
18 actually offer her a contingent fee at some point.

19
20 CHIEF JUSTICE JEAN TOAL: Alright. But, again, sh-, show
21 me exactly where you are.

22
23 JUSTICE COSTA PLEICONES: You're on 1523?

24
25 CHIEF JUSTICE JEAN TOAL: Yes, sir. Show -- show me ---

1 CHALMERS JOHNSON: Yes, Your Honor. Let me flip ---

2

3 CHIEF JUSTICE JEAN TOAL: --- exactly where you are.

4

5 CHALMERS JOHNSON: --- to the page myself.

6

7 CHIEF JUSTICE JEAN TOAL: I'm looking straight at 1523,
8 and I'm no-, notice in the second paragraph, "We have clarified,
9 and you understand, that we are not currently representing you
10 on a contingent fee basis. We explored and considered that
11 possibility, but the nature of your case precludes this as a
12 viable option." That's in the -- and then they repeat that,
13 "For all business action-, aspects of our legal representation,
14 the terms of our engagement letter dated May the 5th, 1998,
15 will control, except that they may be modified by a subsequent
16 writing." Now, show me the ---

17

18 JUSTICE DONALD BEATTY: You're on 1526?

19

20 CHALMERS JOHNSON: Correct, Your Honor; sorry. It was
21 the end of that letter. I -- I apologize. I wrote down the
22 beginning of the letter to mark it for myself. It starts with
23 the, "With this narrowed focus of discovery and legal claims,"
24 underlined, and at the end they say, "Haynesworth will receive
25 ---"

1 CHIEF JUSTICE JEAN TOAL: "We agree to limit or cap your
2 legal fees through the conclusion of the trial at \$40,000 in
3 additional fees."

4
5 CHALMERS JOHNSON: Correct. So that was the advanced ---

6
7 CHIEF JUSTICE JEAN TOAL: "That's a cap ---

8
9 CHALMERS JOHNSON: --- payment.

10
11 CHIEF JUSTICE JEAN TOAL: "--- on additional fees to try
12 the case. It is possible that your additional legal fees will
13 be less than that amount, but we can't guarantee it. In the
14 event that any recovery of damages through settlement of trial
15 exceeds \$150,000 exclusive of a fee award by the court, you
16 agree that Sinkler & Boyd will receive twenty percent of the
17 excess recovery in addition to its fees as set forth above."

18
19 CHALMERS JOHNSON: That's a contingency fee, Your Honor.

20
21 CHIEF JUSTICE JEAN TOAL: Right. Now, uh, where did she
22 sign accepted?

23
24 CHALMERS JOHNSON: She did not. The question that Your
25 Honor posed to me, in -- in fact, I think stated to me, was

1 that there was no evidence whatsoever that there was any
2 discussion of a contingency fee.

3

4 CHIEF JUSTICE JEAN TOAL: No -- no. I did not say that,
5 but if I -- if you think I did, let me clarify what I'm asking
6 you. There is no evidence in this record that the parties
7 reached a written agreement as to a contingent fee
8 arrangement.

9

10 CHALMERS JOHNSON: Oh, that's correct.

11

12 CHIEF JUSTICE JEAN TOAL: That is correct, right?

13

14 CHALMERS JOHNSON: Correct.

15

16 CHIEF JUSTICE JEAN TOAL: Okay.

17

18 JUSTICE JOHN KITTREDGE: And at best, this is just a
19 hybrid. I mean, uh, -- because in December, I think it was
20 December 15th, they wrote a letter. Categorically said no
21 contingency fee. This is, uh, -- shortly thereafter,
22 apparently, communication back and forth, and to placate the
23 client, um, they're still going to bill \$40,000 up to through
24 the conclusion of the trial and thereafter.

25

1 CHALMERS JOHNSON: Right. It's a very twisted set of
2 events. If you read the letters that I've pointed to you, you
3 can follow it. I actually had to do that on note cards to
4 figure out where they were going with this, but it's a back
5 and forth. She -- in the beginning, it's very clear. I'll
6 just boil it down. She believed that they were going to have
7 a contingency fee afterwards. She says that was based on a
8 discussion with Becker. In the very first letter here, on
9 the, 1509, Becker's writing her, saying, "I'm so sorry you
10 misunderstood. What I was really telling you is that I would
11 run a contingency fee by my partners and see if they would
12 agree to it." But guess what, they didn't agree. Then you
13 get in this big fight between the two of them, and guess what,
14 the law firm spends all its time and energy and effort
15 fighting with this client, trying to renegotiate its fees,
16 while ---

17
18 CHIEF JUSTICE JEAN TOAL: Well, we get -- we get into
19 this issue about the fee, uh, because of your assertion, uh,
20 in answer to Justice, uh, Kittredge's question, "What should
21 Haynesworth have done," that there shouldn't have been all
22 this back and forth about fees. Well, there was a good deal
23 of back and forth because of, uh, her, uh, beliefs, not
24 supported by any of the written documents, uh, that they would
25 have signed together about this contingent fee arrangement.

1 So you say that's one thing they should have done. Would that
2 -- that -- that fuss back and forth, uh, uh, accomplished what
3 in terms of making them liable for, uh, professional
4 negligence?

5
6 CHALMERS JOHNSON: They missed every single deadline for
7 discovery, and the judge withdrew the, uh, injunction as a
8 result. They also failed to file a response to a motion to
9 dissolve the injunction in federal court, which, if you don't
10 file within fourteen days, the court considers that -- can
11 consider that consent.

12
13 CHIEF JUSTICE JEAN TOAL: If she were never entitled to
14 an injunction, why did that matter? That's, I think, what's
15 being asked here.

16
17 CHALMERS JOHNSON: Your Honor, I -- the question -- I
18 think the question is what could the jury have found because
19 this is a directed verdict, and if there's some --
20 (indiscernible) of evidence to support my claim that a jury
21 could have found that the reason she lost this injunction is
22 because her attorneys were not doing their job and were
23 dickered with her over fees instead, that we might have won
24 this case, especially when John Freeman said ---

25

1 CHIEF JUSTICE JEAN TOAL: The jury would not have been
2 permitted to make that finding if, in the first instance, she
3 were never entitled to the injunction. Am I not right?

4
5 CHALMERS JOHNSON: I don't believe so, Your Honor. She
6 got the injunction whether she was entitled to it or not. Her
7 attorneys did a good job to get it. They should have kept it.

8
9 JUSTICE JOHN KITTREDGE: What's the effect, if any, maybe
10 not, what -- is there any effect or relevance to the plaintiff
11 not availing herself of the purposes for which the federal
12 court issued the injunction in the first place?

13
14 CHALMERS JOHNSON: Your Honor, I fail to -- I don't
15 understand why people keep saying that, that she never did any
16 surgeries. It was only in place for six or seven weeks. She
17 had four surgeries set for February and March.

18
19 CHIEF JUSTICE JEAN TOAL: No, she never made any attempt
20 until right at the end, uh, to -- when she was on a pro se
21 status to set any surgeries. They weren't even -- those
22 surgeries, uh, were set way at the end, uh, after Judge Duffy,
23 uh, uh, had that status conference. Uh, uh, what she'd been
24 advised is, uh, from what I understand the record to be, as
25 soon as that injunction was obtained, she was advised by her

1 attorneys, "Immediately start scheduling some surgeries so
2 that you will be able to show the court, uh, that, uh, uh,
3 this is necessitous to keep in place." This thing was on a
4 rocket docket, uh, she had not really put it -- put forth any
5 substantial information about, uh, what it would take to get
6 the preliminary injunction, so the advise was, "We've got this
7 on a very hurried basis, you need to go on and schedule some
8 surgeries." That's why it's being asked.

9
10 CHALMERS JOHNSON: And, Your Honor, the answer is page
11 1464, a letter of January 26th, the day after the preliminary
12 injunction which dissolved from East Cooper Hospital
13 specifically cancelling four scheduled surgeries. She must
14 have had those surgeries scheduled before the preliminary
15 injunction was dissolved, otherwise East Cooper wouldn't have
16 sent her that letter dissolving them. Judge Duffy also
17 recognizes that she had four at the hearing and tells her
18 she's going to have to cancel them. I think there is
19 sufficient evidence for the jury to find that she lost
20 something. Thank you, Your Honors.

21

22 CHIEF JUSTICE JEAN TOAL: Alright. Mr. Johnson, you have
23 been asked a lot of questions, and you have a lot of issues.
24 Uh, I don't want you -- you, of course, are going to have some
25 time on reply.

Defendants,

CERTIFICATE OF SERVICE

FILED
2011 FEB - 1 PM 3:59
JULIE J. ARKSTRONG
CLERK OF COURT
BY _____

87

1 of 2

Fax: 843.958.4434

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

Re: 07-CP-10-1444
Doe(CHolmes) v. Becker et al

Dear Ms. Armstrong:

Enclosed for filing is a Motion with abeyance request and Proof of Service in the above case.
Also, enclosed please find the filing fee, motion cover, and a SASE for return of the file-marked copy.

Thanking you in advance for your kind consideration, I am

Very truly yours,

cc

RECEIVED

FEB 28 2017

SC Court of Appeals

Haynsworth
Sinkler Boyd, PA

ATTORNEYS AND COUNSELORS AT LAW

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March 2, 2017

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MAR 02 2017

SC Court of Appeals

RE: *Cynthia Holmes v. Haynsworth Sinkler Boyd, et al.*
Appellate Case No. 2017-000266
HSB File: 04625.1439

Dear Ms. Kitchings:

I am writing to supplement my letter dated February 28, 2017, concerning whether Cynthia Holmes' ("Holmes'") notice of appeal (the "Notice") falls within the scope of the South Carolina Supreme Court's order dated December 2, 2009 (the "Order"). As you are aware, the above-captioned respondents ("Respondents") take the position that Holmes' filing falls within the purview of the Order and, accordingly, should be stricken by this Court. However, Respondents also believe that the Notice is an improper appeal of an un-appealable interlocutory order and, accordingly, should be rejected on that basis as well. A copy of the order being appealed is enclosed, as it appears it was not attached to Holmes' Notice of Appeal.

The law is well-settled that "[t]here are only four basic situations from which a party may appeal: (1) intermediate judgements, orders or decrees involving the merits, (2) orders affecting substantial rights when such orders in effect determine the action and prevent a judgment from which an appeal may be taken or when the orders discontinue the action, (3) a final order in special proceedings, and (4) interlocutory orders continuing, modifying, or refusing injunctions." *Croul v. South Carolina Nat'l Bank*, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982).

Here, the Circuit Court order Holmes seeks to appeal does not fall under any of the appealable categories, as it does not terminate the litigation, purport to be a final order in a special proceeding, or concern any injunction. Moreover, the only matter before the Circuit Court is Respondents' Rule to Show Cause, the purpose of which is to determine whether Holmes has assets to apply toward satisfaction of the judgment Respondents received in this matter's underlying malpractice action (the "Judgment"). None of Holmes' motions, however, relate in any way to the Rule to Show Cause, but instead attempt to re-litigate the underlying malpractice action and frustrate Respondents' attempts to collect on the Judgment. Holmes' Notice, then, is improper and, should

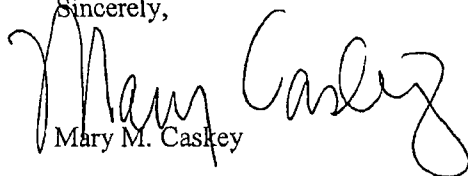
Haynsworth
Sinkler Boyd, P.A.
ATTORNEYS AND COUNSELORS AT LAW

March 2, 2017
Page 2

this Court not strike her filing based on the Order, it should dismiss her appeal because the underlying Circuit Court order is not appealable.

Please do not hesitate to contact me if you have any additional questions.

Sincerely,


Mary M. Caskey

cc: Cynthia Holmes (via U.S. Mail)

The Supreme Court of South Carolina

J. Doe,¹

Petitioner,

v.

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents.

ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op. No. 2008-UP-596 (S.C. Ct. App. filed Oct. 17, 2008). The petition is denied.

However, this action is just one in a number of frivolous actions petitioner has filed relating to the revocation of her medical staff privileges at East Cooper Community Hospital *in 1997*.² Because we find petitioner has

¹ It is unclear why petitioner was allowed to proceed anonymously in this action. We note further that petitioner has at various times in other actions gone by the name Cynthia Holmes and Cynthia Collie. In order to avoid any confusion, we point out that J. Doe, Cynthia Holmes and Cynthia Collie are one and the same.

² A circuit court judge presiding over one of petitioner's lawsuits, found the following in a recent order imposing sanctions on petitioner:

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being assigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Holmes engaged in a lengthy, albeit fruitless, administrative appeal of the

Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her state court case against the Hospital. In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges. In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the [South Carolina Frivolous Proceedings] Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in absence of evidentiary support. Her tactics have been dilatory, vexatious, that is brought without sufficient grounds, oppressive and unreasonable.

Plaintiff[s] conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

engaged, and continues to engage in, vexatious litigation related to that issue, we hereby direct the Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice law in this state.³

³ In addition to the above captioned action, petitioner has filed notices of appeal and petitions for a writ of certiorari in the following actions:

J. Doe v. Manton Grier James Y. Becker and Haynsworth Sinkler Boyd, P. A., as successor to Sinkler & Boyd, P. A. (2002-CP-01-1448 and 2002-CP-40-3705)

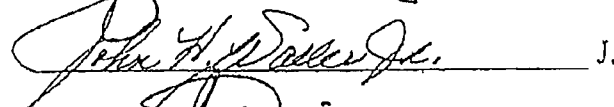
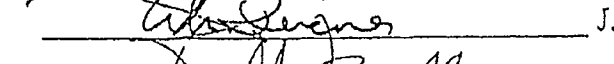
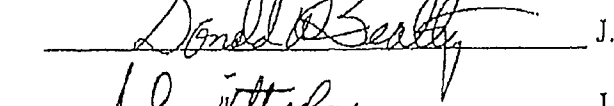
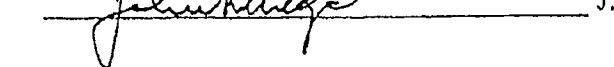
Cynthia Holmes, M.D. v. Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker (2007-CP-10-1444)

Cynthia Holmes, M.D. v. East Cooper Community Hospital, Inc.; Tenet Healthsystem Medical, Inc.; John Grady, M.D.; Paul Yantis, M.D. (2005-CP-10-5113)

The latter action is now pending in this Court. Only the appeal at issue has resulted in the issuance of an opinion by the Court of Appeals. The remaining appeals were dismissed by order of the Court of Appeals prior to the issuance of an opinion because the appeals were interlocutory. We note that in these matters, petitioner has filed numerous frivolous motions, indicating her lack of knowledge of or complete disregard for the appellate process.

We also note that petitioner has recently been sanctioned in two of these matters (2005-CP-10-5113 and 2007-CP-10-1444) by the circuit court. By order dated July 27, 2009, the circuit court ordered petitioner to pay \$90,000 in attorney's fees to opposing counsel based on her frivolous initiation and continuation of the proceeding. By order dated November 18, 2009, the circuit court, as noted in footnote 1 above, sanctioned petitioner and entered judgment against her in the amount of \$200,000, noting the amount was not as much as was justified by the facts.

IT IS SO ORDERED.


C. J.

J.

J.

J.

J.

Columbia, South Carolina

December 2, 2009

Haynsworth
Sinkler Boyd, PA.

ATTORNEYS AND COUNSELORS AT LAW

POST OFFICE BOX 11889
COLUMBIA, SOUTH CAROLINA 29211-1889

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MAR 02 2017

SC Court of Appeals

VIA HAND DELIVERY
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1200 Senate Street
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C. HOLMES, M.D.

P.O. Box 187
Sullivans Island, SC 29482
843.883.3010

The Honorable Jenny A. Kitchings
SCCOA
1220 Senate St.
Columbia, SC 29201

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MAR 09 2017

SC Court of Appeals

Re: Holmes v. Becker et al
No. 2017-000266

Dear Jenny:

Thank you for your kind letter dated February 23rd. We are timely responding to the request for clarification regarding the enclosed copy of the order on appeal. As noted in the attached copy of the 2017 order on appeal and as demonstrated in your own office, *Pro Se* Defendants' pattern and practice is to skulk around clerk's offices attempting impermissible ex parte contacts with staff regarding December 2, 2009, order in an unrelated case which Defendants know was superseded on appeal. Thank you for bringing transparency to untrustworthy Defendants' actions designed to escape the merits while evading judicial review and capable of repetition as documented herein.

First, the Court of Appeals has such jurisdiction as the General Assembly

prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code § 14-8-200(a) is as follows:

[T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code § 14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the **propriety of rulings made by the circuit court**. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999); Toal *et al.*, *Appellate Practice in South Carolina* (3d ed. 2016), p. 11. The instant matter is a direct appeal.

Pursuant to *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the order is immediately appealable and must be immediately appealed. As found in Toal *et al.*, *Appellate Practice in South Carolina*, 3rd edition, 2016, the 2017 order on appeal is immediately appealable, because such order falls within the statutory definition of a substantial right under section 14-3-330(2)(a). The order is immediately appealable as an order which could determine the action and prevent a judgment from which an appeal might be taken or could discontinue an action or could essentially deny a well-established substantial right closely related to the right to a particular mode of trial. Accordingly, the order is immediately appealable and must be immediately appealed or waived.

Moreover, the enclosed copy of the 2017 order on appeal provides, "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." It is respectfully submitted that there was no notice of any hearing

and, therefore, no opportunity to be heard. Furthermore, there is no record of any attempt to provide notice of any hearing. In fact, despite the statement to the contrary, there is no record of any hearing having been held. Plaintiff is prejudiced thereby and requests meaningful opportunity to be heard. The order on appeal fails to acknowledge the previously filed and currently pending Rule 60, SCRCF, which should be heard first. It also fails to acknowledge the Charleston County Clerk of Court's policy, as outlined in the attached correspondence, of following the South Carolina Rules of Court and recognizing that jurisdiction for pending Rule 59(e), SCRCF, Motion resides with the Presiding Judge who issued the order (the author of the 2017 order on appeal is not the Presiding Judge for Rule 59(e), SCRCF, Motion). As such, the order is based on error of material fact and/or law and should be reversed.

In addition, the enclosed copy of the 2017 order on appeal establishes that the lower court determined the unrelated 2009 order to be overbroad and it is not time-limited. As such, the 2009 order cannot pass constitutional muster. Plaintiff submits that the order on appeal denies one party any meaningful opportunity to respond while essentially anointing Pro Se Defendants and their self-serving, false, unverified petition in violation of statutory mandates. The failure to support the rule to show cause by verified petition is a fatal defect. *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 442 S.E.2d 611, 617 (1994). "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of*

Sacramento v. Lewis, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. See *Hicks v. Felock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

Moreover, the appeal of the order includes, but is not limited to, a jurisdictional challenge. Objection to Pro Se Defendants' unverified, false petition was timely filed but has not been ruled upon. When deciding a jurisdictional question based on facts, a review of the jurisdictional facts based on the record is required. *Knight v. Kelly*, 289 S.C. 318, 345 S.E.2d 490 (1986); *Martin v. Skinner*, 286 S.C. 527, 335 S.E.2d 252 (Ct. App. 1985).

Defendants have raised the December 2, 2009, order in an unrelated case with unrelated caption and unrelated parties regarding conflict of laws and the statute of limitations in a foreign jurisdiction. Since Defendants have raised the December 2, 2009, order, the pertinent circumstances surrounding that order are as follows.

The underlying case is a suit for professional negligence wherein the Federal District Court ruled that Defendants wrongfully failed to timely appeal Defendant's negligent loss of injunction resulting in damages, thereby committing malpractice. See

attached Federal District Court Order.

At trial, Defendants failed to extend professional courtesy for Plaintiff's trial counsel, who was in out-of-state court, to appear. The trial proceeded at Defendant's self-serving insistence without opposing trial counsel. At trial, Professor John Freeman testified under oath before the jury that what Defendants did when they threatened to prejudice the case in order to extract fees was "unethical. I consider that would be a form of blackmail or extortion and criminal in South Carolina to do that." See attached Trial Transcript excerpt of Professor John Freeman's testimony. A jury could and should reasonably find that the negligent and/or criminal acts are a breach of the standard of care. Despite the obvious questions of fact, the jury was denied the right to find the facts when directed verdict was wrongfully granted by a retired judge. Because retired judges have no support staff, the retired judge essentially allowed Malpractice Defendants to write their own order. Consequently, that order does not reflect the record or reality. Transcript available upon request. Moreover, Defendants materially fail to disclose differing findings by the appellate courts. See attached Transcript Excerpt of Oral Argument by the Physician's Trial Counsel who was unfairly denied the opportunity to appear at trial.

Thereafter, Defendants misrepresented that the wrong statute applied and filed a motion under the amended S.C. Code Section 15-36-10. But for the unconstitutional retroactive application of the amended S.C. Code Section 15-36-10 (hereafter FPA), we would not be here. Even if the amended FPA authorizes an order such as the December 2, 2009, order, and Plaintiff contends it does not, the Court has ruled that the amended

/

FPA is NOT applicable to this lawsuit which everyone agrees occurred prior to the effective date of the amended FPA. *Southeastern Site Prep, L.L.C., v. Atlantic Coast Bldrs. and Contractors, L.L.C.*, 394 S.C. 97, 713 S.E.2d 650 (Ct. App. 2011).

The underlying case in the malpractice claim was transferred from federal court to State Court, whereupon Defendants claimed they did not like practicing in State Court. Defendants drafted a State Court complaint and advised Plaintiff to file it pro se. Thereafter, the Circuit Court Judge (and later Court of Appeals Judge) made the findings found in the attached Order and the case was resolved in Plaintiff's favor. The attached expert opinion affidavit supports the findings as well. Any well-trained Physician would and should adamantly object.

Further, the matter on appeal herein is incidental or collateral to the underlying case and does not constitute a traditional money judgment in the case. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The underlying claim ended in wrongful directed verdict with no money judgment. There was no counterclaim. Objection to the false contents of *Pro Se* Defendants' unverified petition is not prohibited by a 2009 order in an unrelated case with unrelated caption and different parties.

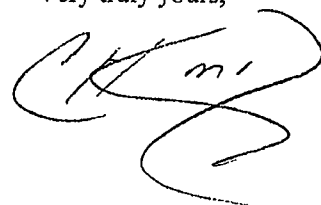
The December 2, 2009, order purports to be based on an order in footnote two with no citation, source, or authority. That source was an order, then stayed pending appeal and later superseded on appeal. On information and belief, whether intentional or not, the lack of any citation or source as well as the unsupported order are examples of

former Chief Justice Toal's lack of objectivity when it comes to her former employer, the Haynsworth firm. That same former employer is the one she routinely credits in public and on the record for "launching" her career and "the rest is history" as she tells it.

That 2009 order is void because it states on its face it is NOT based on the record on appeal and it is not supported by the facts. Instead, it purports to be based on footnote two without citation, source, or authority. As just one error of material fact, it fails to acknowledge that the federal lawsuit was transferred to State court and resolved in the Physician's favor. Untrustworthy Defendants misrepresented that the amended FPA was applicable when it was not. Defendants' motion for summary judgment in the professional negligence cause of action was DENIED refuting any claim the lawsuit is frivolous. That 2009 order, based on error of material fact and law, was superseded on appeal. The amended FPA is unconstitutional on its face and as applied herein.

Again, thank you for your even-handedness and fairness in this matter and for bringing transparency to Pro Se Defendants' nefarious attempts to escape the merits and evade judicial review. With best personal regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be "CH mi" with a large, stylized flourish underneath.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-1444

Holmes

Haynesworth Sinkler Boyd, et al.

RECEIVED

MAR 08 2017

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41, SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
NA	NA	\$NA
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

COURT OF COMMON PLEAS
AND GENERAL SESSIONS
100 BROAD STREET, SUITE 100
CHARLESTON, S.C. 29401-2258
(843) 958-5000
(843) 958-5020 FAX
www.f.charlestoncounty.org



FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY
100 BROAD STREET, SUITE 111
CHARLESTON, S.C. 29401-2265
(843) 958-4400
(843) 958-4444 FAX
www.f.charlestoncounty.org

JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

June 25, 2015

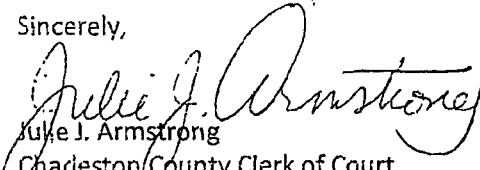
C. Holmes, M.D.
P.O. Box 187
Sullivan's Island, SC 29482

Dear Ms. Holmes,

Thank you very much for your letter of June 19, 2015 regarding Rule 59(e). In reading the rule, I believe you might be referring to 59(f) which addresses any motion filed under this rule to be heard by the judge who issued the order. My office does follow Rule 59; however, it may be that a motion is scheduled inadvertently before the incorrect judge and in those instances; the motion is removed and rescheduled with the appropriate judge.

Thank you again for your kind words and please let me know if I can be of further assistance.

Sincerely,


Julie J. Armstrong
Charleston County Clerk of Court

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JUN - 2 2000
LARRY W. PROPPS, CLERK
CHARLESTON, SC

J. Doe, M.D.,

Plaintiff,

v.

C.A. # 2:99-833-23

Tenet HealthSystem Medical, Inc.
and East Cooper Community
Hospital, Inc.,

Defendants.

ORDER

This matter is before the court upon plaintiff's motion for an injunction pending appeal under Federal Rule of Civil Procedure 62 (c). For the following reasons, the motion is denied.

Plaintiff, Cynthia Holmes, M.D., is a physician who had admitting privileges at the defendant Hospital. Upon the Hospital's termination of her admitting privileges, Dr. Holmes brought this action for both injunctive relief and monetary damages asserting violations of federal anti-trust laws and state law claims. On November 22, 1999, this court enjoined the Hospital from terminating Dr. Holmes' privileges. Thereafter, the defendants filed a motion to dissolve the preliminary injunction on the grounds that Dr. Holmes had failed to abide by the Scheduling Order and had failed to comply with the rules of discovery. Furthermore, the alleged harm suffered by her current patients had not materialized.

On January 25, 2000, the court granted the defendants' motion to dissolve the preliminary injunction after holding a hearing on the matter. Dr. Holmes did not appeal the court's order dissolving the injunction. Soon thereafter, the defendants moved for summary judgment. After considering the briefs filed, both in support of and in opposition to the motion, this court granted the defendants' motion for summary judgment as to all federal claims, and dismissed without prejudice

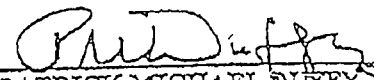
the supplemental state law claims on April 17, 2000. Plaintiff has now appealed this court's Order. Simultaneous with the filing of her notice of appeal, plaintiff filed this motion for an injunction pending appeal pursuant to Rule 62 (c).¹

Rule 62 (c) authorizes the court to suspend, modify, restore, or grant an injunction during the pendency of an appeal. Fed. R. Civ. P. 62 (c) "This subdivision . . . codifies the inherent power of courts to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment." Charles A. Wright, Arthur R. Miller, Mary K. Kane, 11 Federal Practice and Procedure § 2904 (2d ed 1995). However, due to the fact that Dr. Holmes did not seek such relief upon the dissolution of the injunction back in January, this court declines to restore the injunction at this time. If Dr. Holmes had appealed the order dissolving the injunction, such a motion may have been appropriate at that time. However, the status quo of this case since January is the absence of any injunction against the defendants. Therefore, the motion is denied.

It is therefore,

ORDERED, for the foregoing reasons, that the Plaintiff's motion for an injunction pending appeal is DENIED,

AND IT IS SO ORDERED.


PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
June 1st 2000

2

¹ Plaintiff also referenced the provision for injunctive relief under Clayton Act cases as a basis for her request. See 15 U.S.C. § 26. However, section 26 only provides injunctive relief as a remedy for antitrust violations. It has no applicability to the relief sought at this stage of the plaintiff's case.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
_____)

COURT OF COMMON PLEAS
07-DR-10-1444

ORIGINAL

J. DOE (C. HOLMES))
)
PLAINTIFF)
vs.)

PARTIAL
TRANSCRIPT OF RECORD \

MANTON GRIER, JAMES Y. BECKER,)
HAYNSWORTH SINKLER & BOYD, PA,)
DEFENDANTS)
_____)

TESTIMONY OF:
JOHN P. FREEMAN

JUNE 11, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

HONORABLE THOMAS L. HUGHSTON, JR., JUDGE

A P P E A R A N C E S:

CYNTHIA HOLMES, ESQUIRE
APPEARING PRO SE

JOHN S. WILKERSON, III, ESQUIRE
RICHARD S. DUKES, JR, ESQUIRE
ATTORNEYS FOR DEFENDANT

VIVIAN CROSS,
SHARON JONES,
OFFICIAL COURT REPORTERS

THE COURT: THIS IS NOT -- THIS IS NOT YOUR TIME TO TESTIFY. THAT HAS ALREADY PASSED. YOU NEED TO ASK HIM SOME QUESTIONS.

BY MS. HOLMES:

Q ARE -- ARE YOU AWARE THAT THAT IS THE DAY OF THE LOSS OF THE PRELIMINARY INJUNCTION?

A THE DATE OF THE ADDENDUM?

Q ARE YOU AWARE THAT THAT -- THAT DEFENDANTS HAVE TESTIFIED THAT IT WAS GENERATED ON THE DATE OF THE -- OR LET'S SAY THE MODIFICATION WAS MADE ON THE DATE OF THE HEARING.

A OKAY.

Q ARE YOU AWARE THAT DEFENDANT THREATENED TO PREJUDICE THE CASE IN ORDER TO EXTRACT---

MR. DUKES: YOUR HONOR---

THE COURT: THIS IS NOT -- THIS IS NOT TESTIMONY. YOU DIDN'T TESTIFY TO ANYTHING LIKE THAT.

THE WITNESS: I'M NOT AWARE OF---

MR. DUKES: NO---

THE COURT: YOU DON'T HAVE TO ANSWER THAT.

BY MS. HOLMES:

Q DO YOU BELIEVE THAT THREATENING A CASE IN ORDER TO -- THREATENING TO PREJUDICE A CASE IN ORDER TO EXTRACT FEES IS -- COMPLIES WITH THE STANDARD OF CARE?

A NO, MA'AM. LET ME BE REAL CLEAR ON THIS. I --

JOHN FREEMAN -- CROSS BY MS. HOLMES

87

1 I CONSIDER THAT WOULD BE UNETHICAL. I CONSIDER THAT WOULD
2 BE A FORM OF BLACKMAIL OR EXTORTION AND CRIMINAL IN SOUTH
3 CAROLINA TO DO THAT. AND I -- I -- THAT'S MY ANSWER.

Bank of America



Cashier's Check

No.

0912453

Date

30-1/1140

40-14-0003B 7-1999

CHARLESTON

CHARLESTON-200 MEETING STREET

02-01-00

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per month thereafter.

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Bank of America, N.A.
San Antonio, Texas

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CYNTHIA HOLMES MD
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by Bill Boyd

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SINKLER & BOYD, A
DEPOSITARY BANK ENDORSEMENT

0815423

ENDORSE CHECK HERE

☒ For Deposit Only

Acct of SINKLER & Boyd, P.A.

by Bill Boyd

FOR DEPOSIT ONLY

Boyd P.A.

SINKLER & BOYD P.A.

DEPOSITORY BANK ENDORSEMENT

C. Holmes, M.D.,)
 Appellant,)
)
 vs.)
)
 Haynesworth Sinkler Boyd, P.A.,)
 successor to Sinkler & Boyd, P.A.,)
 Manton Grier, and James Y. Becker,)
 Respondents.)

LOWER COURT NO. 02-CP-10-1448
 AND AFTER CHANGE OF VENUE NO. 07-CP-10-1444
 APPELLATE CASE NO. 2010 - 154986

TRANSCRIPT OF APPEAL HEARING

BEFORE THE SOUTH CAROLINA SUPREME COURT
 THE HONORABLE JEAN HOFER TOAL, CHIEF JUSTICE
 THE HONORABLE COSTA M. PLEICONES, JUSTICE
 THE HONORABLE KAYE G. HEARN, JUSTICE
 THE HONORABLE JOHN W. KITTREDGE, JUSTICE
 THE HONORABLE DONALD W. BEATTY, JUSTICE

1 CHALMERS JOHNSON: Thank you. Chief Justice Toal,
2 Justices of the Supreme Court, my name is Chalmers Johnson.
3 I'm here, um, representing Dr. Cynthia Holmes today. In this
4 appeal, we're asking, uh, that the court overturn an order
5 which granted a directed verdict against her on claims of
6 professional negligence and others that were against her
7 former attorneys, Mr. Grier, Mr. Becker, and Haynesworth, um,
8 Sinkler & Boyd. We'll also be addressing an order which
9 granted sanctions after that trial against Dr. Holmes for
10 instituting a frivolous lawsuit.

11

12 CHIEF JUSTICE JEAN TOAL: Go ahead.

13

14 CHALMERS JOHNSON: Thank you, Your Honor. Directed
15 verdict should not have been granted in this case. Um, I know
16 we have a huge record on appeal, and just a -- a laundry list
17 of issues, which I hate to do in any appeal, but if I do
18 nothing else today, it's my goal to focus your attention on
19 fifty pages of the record on appeal, and on one piece of extra
20 testimony from the trial. The particular pages that I hope
21 that you will pay attention to are pages 1509 to 1560. These
22 fifty pages, which are exhibits from the trial, present a
23 succinct chronology of events and provide evidence of a duty,
24 a negligent breach of that duty, damages, and causation.

25

1 JUSTICE JOHN KITTREDGE: I don't want to interrupt the
2 flow of your argument, Mr. Johnson, but why isn't this case
3 over on the statute of limitations issue?

4

5 CHALMERS JOHNSON: Your Honor, the statute of limitations
6 issue only applies to the two individual defendants. So even
7 if it was found that they were not ---

8

9 JUSTICE JOHN KITTREDGE: Well, as to them?

10

11 CHALMERS JOHNSON: Okay. As to them, Your Honor, our
12 argument is that they availed themselves of the court to the
13 point where they should have -- the court should have
14 considered to have personal jurisdiction over them within the
15 time period of the ---

16

17 JUSTICE JOHN KITTREDGE: So ---

18

19 CHALMERS JOHNSON: --- statute of limitations.

20

21 JUSTICE JOHN KITTREDGE: So coming -- coming to court and
22 submitting to the jurisdiction of the court waives a party's
23 ability to assert affirmative defenses?

24

25 CHALMERS JOHNSON: It doesn't necessarily waive the right

1 to af-, assert affirmative defenses, Your Honor, but as to
2 personal jurisdiction and when the court has personal
3 jurisdiction, I don't think that South Carolina recognizes a
4 special appearance, and especially when you go so far as to
5 actually defend the case at trial and obtain a directed
6 verdict. You've certainly availed yourself of the court,
7 shown up, and, um, evidenced your receipt of notice of the
8 case and your time to prepare.

9

10 JUSTICE JOHN KITTREDGE: I -- I understand that in the
11 context of being able to subsequently assert a jurisdictional
12 challenge, but I don't understand how an appearance forecloses
13 a party's ability, uh, to assert affirmative defenses,
14 including statute of limitations.

15

16 CHALMERS JOHNSON: Uh, it wouldn't, Your Honor. The only
17 way -- the only argument I have on that is to come at it from
18 a personal jurisdiction standpoint, and I think you put your
19 finger right on it; I won't belabor the point any. Um, the
20 best argument I can come up with is that they've availed
21 themselves of the court. I think that the court had personal
22 jurisdiction over them from the very beginning, which would
23 have been within the statute of limitations. Um, and that's -
24 - that's how I come at that, Your Honor.

25

1 CHIEF JUSTICE JEAN TOAL: Let's go to what you would like
2 us to focus on, pages, uh, 1509 to 1560.

3

4 CHALMERS JOHNSON: Yes, Your Honor.

5

6 CHIEF JUSTICE JEAN TOAL: They include, as it looks like
7 to me from just a brief look, the initial engagement letter,
8 uh, the addenda, uh, uh, to that engagement letter, uh, and
9 certain other pleadings surrounding the order of Judge Duffy.

10

11 CHALMERS JOHNSON: Yes, Your Honor.

12

13 CHIEF JUSTICE JEAN TOAL: Uh, is that correct?

14

15 CHALMERS JOHNSON: That's correct, Your Honor.

16

17 CHIEF JUSTICE JEAN TOAL: Alright, sir. Uh, go forward
18 and tell us what is succor about those ---

19

20 CHALMERS JOHNSON: Thank you.

21

22 CHIEF JUSTICE JEAN TOAL: --- documents.

23

24 CHALMERS JOHNSON: Here's what I want to focus on. This
25 case is -- you know -- we're actually in front of you in this

1 very case later this year, I believe, or next year. Um, it
2 has involved a lengthy process, with lots of different things
3 happening. This case, if we want to actually make a case that
4 Judge Houston should have seen, was about the injunction. Dr.
5 Holmes was able to, um, obtain an injunction, which allowed
6 her to continue with doing surgeries.

7

8 JUSTICE KAYE HEARN: And she did no surgery during the
9 course of that injunction, isn't that correct?

10

11 CHALMERS JOHNSON: Correct, Your Honor. The injunction was
12 granted at the end of November, and the, uh, injunction was
13 reversed in January. So ---

14

15 CHIEF JUSTICE JEAN TOAL: And, of course, why, the
16 standard for keeping such an injunction in place, uh, is both
17 the, uh, harm that might ensue, uh, as, uh, before the case is
18 tried, as well as likelihood of success on the merits, and I
19 guess that's where, if you can get past the fact that, uh,
20 she's, uh, not demonstrated that her practice was really hurt
21 because she didn't admit anybody, uh, you've got the, uh,
22 ruling by Judge Duffy on the merits, uh, affirmed by the
23 Fourth Circuit, cert declined by the Supreme Court, and then
24 fully explicated again by Judge Pieper in his order dismissing
25 the antitrust, uh, uh, uh, and allied, uh, causes, uh, in

1 State Court. Those are the causes -- those two federal causes
2 are those that would support that injunction. Uh, so if on
3 the merits, according to the various judges I recited, she is
4 not entitled to any relief, then what Haynesworth, Becker, and
5 Grier did or did not do in pursuing the preliminary junction
6 really doesn't make any difference, does it?

7
8 CHALMERS JOHNSON: I think it makes -- I think that is
9 the case, Your Honor. Uh, not -- not that you're correct, but
10 I think it is our case that she lost the injunction and her
11 damages ensued from that. You can ---

12

13 CHIEF JUSTICE JEAN TOAL: Well, I understand that, but
14 the -- the -- it's not just that simple. Just because she
15 lost the injunction doesn't mean she would be entitled to
16 damage had she suffered any damages, and that's another big
17 issue, as to whether this record discloses any damages, uh,
18 uh, since she didn't admit any patients during the time she
19 definitely had the injunction. Uh, it's arguable that she
20 suffered no damages. Uh, if that -- but beyond all that, if
21 she had suffered some damages in the sense that, uh, she had
22 lost the opportunity to admit patients, if she wasn't entitled
23 to the injunction in the first instance, how in the world does
24 it make any difference that the preliminary injunction was
25 dissolved?

1

2 CHALMERS JOHNSON: She was entitled to the injunction in
3 the first instance. The judge ---

4

5 CHIEF JUSTICE JEAN TOAL: She really wasn't. Uh, that's
6 the ruling that all the federal courts have made. The
7 entitlement is not just because of, uh, harm, it's because you
8 have a likelihood of success on the merits. As it develops,
9 she had no likelihood of success on the merits.

10

11 CHALMERS JOHNSON: Your Honor, ---

12

13 CHIEF JUSTICE JEAN TOAL: None.

14

15 CHALMERS JOHNSON: Your Honor, I -- I respectfully
16 disagree. The federal court only granted partial summary
17 judgment. It dismissed the remainder of her state claims.

18

19 CHIEF JUSTICE JEAN TOAL: The state court claims are not
20 involved with this preliminary injunction. The preliminary
21 injunction is purely involved and is purely bottomed on the
22 federal action, what you're talking about.

23

24 CHALMERS JOHNSON: Right, Your Honor. And at the end of
25 this, um, set of papers, you'll see Judge Duffy, um, correctly

1 recognizes that -- I mean, this injunction had only been in
2 place for about six or seven weeks. He collec-, correctly
3 recognizes that Dr. Holmes had four surgeries scheduled for
4 the next, uh, month or two, and he tell-, p-, tells her, "You
5 better cancel your surgeries and do something about it." On
6 the very next day, she gets her letter from the hospital
7 cancelling all four surgeries.

8

9 CHIEF JUSTICE JEAN TOAL: Well, that -- of course that is
10 what happened, but, again, what he also tells her very
11 definitively is that she was never entitled to the injunction
12 to begin with because her entitlement has to be bottomed on
13 likelihood of success, and she did not have a viable cause of
14 action for the federal causes.

15

16 CHALMERS JOHNSON: And, Your Honor, that's so, but she
17 would have ---

18

19 CHIEF JUSTICE JEAN TOAL: Well, if that's so, end of
20 conversation.

21

22 CHALMERS JOHNSON: She would have had the four surgeries
23 done and collected the money for them. I think she has
24 damages.

25

1 CHIEF JUSTICE JEAN TOAL: No, sir. That -- the fact that
2 she might or might not have is not the inquiry. The inquiry
3 on damages is going to be whether she was entitled to it, not
4 whether she could have gotten a windfall if it had stayed in
5 place. Her entitlement is based on the legitimacy of that
6 federal action.

7
8 CHALMERS JOHNSON: Your Honor, I think her entitlement to
9 perform the surgeries was based on the fact that the judge did
10 grant her the injunction. The reason that the injunction was
11 lost is why this case shouldn't have been thrown out.

12
13 CHIEF JUSTICE JEAN TOAL: Well, I -- I think we
14 understand your position on that.

15
16 JUSTICE JOHN KITTREDGE: Let me -- let me use that
17 comment to ask you about this professional negligence claim.
18 What should her attorneys have done differently? How should
19 they have performed differently that would have likely changed
20 the results?

21
22 CHALMERS JOHNSON: They should have spent their time
23 between the injunction and the loss of the injunction
24 responding to discovery, which was already overdue at the time
25 the discov-, the injunction was granted, and listening to

1 Judge Duffy, who told them that they better stick to the
2 scheduling order, which they didn't, and that's why Judge
3 Duffy undid the injunction, and they should not have generated
4 thirty-five pages of dickering with their client about fee
5 renegotiations, including ---

6
7 CHIEF JUSTICE JEAN TOAL: Well, she's the one that
8 generated that by taking the completely unsubstantiated
9 position by anything that's in this record that she had an
10 entitlement to a contingent fee arrangement. That was the
11 source of the disputation, and every piece of written material
12 here, except a letter she sent saying, uh, uh, that she had
13 received a phone conversation different, which is just another
14 piece of self-serving information on her part. There is no
15 independent writing between the parties that supports anything
16 other than a fee-based arrangement.

17
18 CHALMERS JOHNSON: Actually, Your Honor, uh, one of those
19 letters that I have referred you to, Haynesworth actually
20 offers a contingency fee agreement.

21
22 CHIEF JUSTICE JEAN TOAL: Which one is that? Show me
23 specifically in the record.

24
25 CHALMERS JOHNSON: Let me find it, Your Honor. It is

1 letter #3, January 10th, 2000. Page 1523. In this one,
2 Haynesworth asked for \$3,000 in advance for costs, \$40,000
3 advance fee for attorneys fees that will cover until the end
4 of trial, ---

5
6 CHIEF JUSTICE JEAN TOAL: No, the -- that \$43,000 was not
7 advanced -- covered the end of trial. They had suffered a
8 good deal of lost fees that she had never paid them, and the
9 \$43,000, as I understand it, was an attempt to calculate what
10 was past due, and they said, "We will take this \$43,000, we
11 will not insist in anything more until the end of trial," but
12 the arrangement is a fee-based one. Where in this letter does
13 it talk about contingent fees?

14
15 CHALMERS JOHNSON: They mention in the letter, on page
16 1523, they offer -- if the case is -- if they recover over
17 \$150,000, Haynesworth wants twenty percent of that. So they
18 actually offer her a contingent fee at some point.

19
20 CHIEF JUSTICE JEAN TOAL: Alright. But, again, sh-, show
21 me exactly where you are.

22
23 JUSTICE COSTA PLEICONES: You're on 1523?

24
25 CHIEF JUSTICE JEAN TOAL: Yes, sir. Show -- show me ---

1 CHALMERS JOHNSON: Yes, Your Honor. Let me flip ---

2

3 CHIEF JUSTICE JEAN TOAL: --- exactly where you are.

4

5 CHALMERS JOHNSON: --- to the page myself.

6

7 CHIEF JUSTICE JEAN TOAL: I'm looking straight at 1523,
8 and I no-, notice in the second paragraph, "We have clarified,
9 and you understand, that we are not currently representing you
10 on a contingent fee basis. We explored and considered that
11 possibility, but the nature of your case precludes this as a
12 viable option." That's in the -- and then they repeat that,
13 "For all business actio-, aspects of our legal representation,
14 the terms of our engagement letter dated May the 5th, 1998,
15 will control, except that they may be modified by a subsequent
16 writing." Now, show me the ---

17

18 JUSTICE DONALD BEATTY: You're on 1526?

19

20 CHALMERS JOHNSON: Correct, Your Honor; sorry. It was
21 the end of that letter. I -- I apologize. I wrote down the
22 beginning of the letter to mark it for myself. It starts with
23 the, "With this narrowed focus of discovery and legal claims,"
24 underlined, and at the end they say, "Haynesworth will receive
25 ---"

1 CHIEF JUSTICE JEAN TOAL: "We agree to limit or cap your
2 legal fees through the conclusion of the trial at \$40,000 in
3 additional fees."

4 :

5 CHALMERS JOHNSON: Correct. So that was the advanced ---

6

7 CHIEF JUSTICE JEAN TOAL: "That's a cap ---

8

9 CHALMERS JOHNSON: --- payment.

10

11 CHIEF JUSTICE JEAN TOAL: "--- on additional fees to try
12 the case. It is possible that your additional legal fees will
13 be less than that amount, but we can't guarantee it. In the
14 event that any recovery of damages through settlement of trial
15 exceeds \$150,000 exclusive of a fee award by the court, you
16 agree that Sinkler & Boyd will receive twenty percent of the
17 excess recovery in addition to its fees as set forth above."

18

19 CHALMERS JOHNSON: That's a contingency fee, Your Honor.

20

21 CHIEF JUSTICE JEAN TOAL: Right. Now, uh, where did she
22 sign accepted?

23

24 CHALMERS JOHNSON: She did not. The question that Your
25 Honor posed to me, in -- in fact, I think stated to me, was

1 that there was no evidence whatsoever that there was any
2 discussion of a contingency fee.

3

4 CHIEF JUSTICE JEAN TOAL: No -- no. I did not say that,
5 but if I -- if you think I did, let me clarify what I'm asking
6 you. There is no evidence in this record that the parties
7 reached a written agreement as to a contingent fee
8 arrangement.

9

10 CHALMERS JOHNSON: Oh, that's correct.

11

12 CHIEF JUSTICE JEAN TOAL: That is correct, right?

13

14 CHALMERS JOHNSON: Correct.

15

16 CHIEF JUSTICE JEAN TOAL: Okay.

17

18 JUSTICE JOHN KITTREDGE: And at best, this is just a
19 hybrid. I mean, uh, -- because in December, I think it was
20 December 15th, they wrote a letter. Categorically said no
21 contingency fee. This is, uh, -- shortly thereafter,
22 apparently, communication back and forth, and to placate the
23 client, um, they're still going to bill \$40,000 up to through
24 the conclusion of the trial and thereafter.

25

1 CHALMERS JOHNSON: Right. It's a very twisted set of
2 events. If you read the letters that I've pointed to you, you
3 can follow it. I actually had to do that on note cards to
4 figure out where they were going with this, but it's a back
5 and forth. She -- in the beginning, it's very clear. I'll
6 just boil it down. She believed that they were going to have
7 a contingency fee afterwards. She says that was based on a
8 discussion with Becker. In the very first letter here, on
9 the, 1509, Becker's writing her, saying, "I'm so sorry you
10 misunderstood. What I was really telling you is that I would
11 run a contingency fee by my partners and see if they would
12 agree to it." But guess what, they didn't agree. Then you
13 get in this big fight between the two of them, and guess what,
14 the law firm spends all its time and energy and effort
15 fighting with this client, trying to renegotiate its fees,
16 while ---

17
18 CHIEF JUSTICE JEAN TOAL: Well, we get -- we get into
19 this issue about the fee, uh, because of your assertion, uh,
20 in answer to Justice, uh, Kittredge's question, "What should
21 Haynesworth have done," that there shouldn't have been all
22 this back and forth about fees. Well, there was a good deal
23 of back and forth because of, uh, her, uh, beliefs, not
24 supported by any of the written documents, uh, that they would
25 have signed together about this contingent fee arrangement.

1 So you say that's one thing they should have done. Would that
2 -- that -- that fuss back and forth, uh, uh, accomplished what
3 in terms of making them liable for, uh, professional
4 negligence?

5

6 CHALMERS JOHNSON: They missed every single deadline for
7 discovery, and the judge withdrew the, uh, injunction as a
8 result. They also failed to file a response to a motion to
9 dissolve the injunction in federal court, which, if you don't
10 file within fourteen days, the court considers that -- can
11 consider that consent.

12

13 CHIEF JUSTICE JEAN TOAL: If she were never entitled to
14 an injunction, why did that matter? That's, I think, what's
15 being asked here.

16

17 CHALMERS JOHNSON: Your Honor, I -- the question -- I
18 think the question is what could the jury have found because
19 this is a directed verdict, and if there's some --
20 (indiscernible) of evidence to support my claim that a jury
21 could have found that the reason she lost this injunction is
22 because her attorneys were not doing their job and were
23 dickered with her over fees instead, that we might have won
24 this case, especially when John Freeman said ---

25

1 CHIEF JUSTICE JEAN TOAL: The jury would not have been
2 permitted to make that finding if, in the first instance, she
3 were never entitled to the injunction. Am I not right?

4
5 CHALMERS JOHNSON: I don't believe so, Your Honor. She
6 got the injunction whether she was entitled to it or not. Her
7 attorneys did a good job to get it. They should have kept it.

8
9 JUSTICE JOHN KITTREDGE: What's the effect, if any, maybe
10 not, what -- is there any effect or relevance to the plaintiff
11 not availing herself of the purposes for which the federal
12 court issued the injunction in the first place?

13
14 CHALMERS JOHNSON: Your Honor, I fail to -- I don't
15 understand why people keep saying that, that she never did any
16 surgeries. It was only in place for six or seven weeks. She
17 had four surgeries set for February and March.

18
19 CHIEF JUSTICE JEAN TOAL: No, she never made any attempt
20 until right at the end, uh, to -- when she was on a pro se
21 status to set any surgeries. They weren't even -- those
22 surgeries, uh, were set way at the end, uh, after Judge Duffy,
23 uh, uh, had that status conference. Uh, uh, what she'd been
24 advised is, uh, from what I understand the record to be, as
25 soon as that injunction was obtained, she was advised by her

1cc
D. Platt-Thomas

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

J. Doe, M.D.,

Plaintiff,

vs.

Tenet HealthSystem Medical, Inc.;
East Cooper Community Hospital, Inc.;
John Grady, M.D.; Paul Yantis, M.D.;
and William Cone

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 00-CP-10-1888

ORDER

BY

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JULIE A. HARRINGTON
CLERK OF COURT

FILED

This matter is before the court on the defendants' motion for summary judgment as to each of the plaintiff's causes of action. This case involves the termination of plaintiff's hospital staff privileges at East Cooper Community Hospital ("East Cooper") and allegations of a conspiracy to drive the plaintiff out of the specialty ophthalmology market in the area. For the following reasons, this court grants in part and denies in part the defendants' motion for summary judgment.

I. Background

Plaintiff is a licensed medical doctor in ophthalmology with a practice on Sullivan's Island, South Carolina. In early 1994, the plaintiff began the privileging process at East Cooper because it was the closest hospital to her practice and residence. On July 25, 1994, the plaintiff was notified that she had been appointed to the associate active medical staff. (Def. Mem. Supp. Summ. J. at Ex. 7). Under

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the bylaws, this appointment was for a provisional or initial period of one year. *Id.* at Ex. 3. In order to qualify for reappointment, the plaintiff had to supply the Medical Executive Committee with a statement of qualification from the chief of the department to which she was assigned and a statement of ability from the chief of any other departments in which she would exercise clinical privileges. *Id.* The plaintiff's appointment to the provisional staff could be renewed in six month increments for up to one (1) year. *Id.*

Before the plaintiff completed her year as an associate active staff member, she submitted a request to be converted to the courtesy staff by letter dated November 30, 1994. (Def. Mem. Supp. Summ. J. at Ex. 8). It is not clear from the record how this transfer affected the plaintiff's provisional year or her reappointment status. In May of 1995, the medical staff bylaws were amended and the courtesy staff qualifications changed to require staff privileges at another local hospital. (Def. Mem. Supp. Summ. J. at Ex. 3). Subsequent to the bylaws amendment, a letter of qualification from the plaintiff's department chief was submitted to the medical executive committee and placed in her credentials file, either in July or November of 1995. (Def. Mem. Supp. Summ. J. at Ex. 10).

The next correspondence of record was a request for the plaintiff to submit an application for reappointment on April 12, 1996, by Kara Melin ("Melin"), the hospital's medical staff coordinator. (Def. Mem. Supp. Summ. J. at Ex. 11). Following this request, the plaintiff submitted an application for reappointment on April 18, 1996. (Def. Mem. Supp. Summ. J. at Ex. 12). In response to the plaintiff's

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application for reappointment to the courtesy staff, Melin notified the plaintiff by letter dated April 22, 1996, which stated that in order to receive courtesy privileges the plaintiff had to have staff privileges at another local hospital. (Def. Mem. Supp. Summ. J. at Ex. 13). Following a debate over the courtesy staff requirements and a question about notice to the plaintiff of the bylaw amendments, in a letter dated June 11, 1996, East Cooper agreed to allow the plaintiff to apply for "Associate Active privileges for a one year provision." (Def. Mem. Supp. Summ. J. at Ex. 15). The letter also indicated that the plaintiff would be required to attend fifty percent (50%) of quarterly medical staff and department meetings and have twenty-four (24) patient contacts in that year in order to remain in good standing. *Id.* East Cooper then requested the plaintiff to agree to be reclassified as associate staff by signing the bottom of the letter and returning it to Kara Melin. *Id.*

Initially, the plaintiff sought to reduce the patient contact requirement to twelve (12) patients per year by written amendment to the letter, but the amendment was not agreed to by East Cooper. (Def. Mem. Supp. Summ. J. at Ex. 16). On August 5, 1996, Paul Yantis, the credentials committee chairperson, contacted the plaintiff by phone to discuss the patient contact issue and explained to the plaintiff that the credentials committee could not agree to the change because the twenty-four (24) patient requirement was mandated in the bylaws. (Yantis Depo. at 28). Following that conversation, the President of East Cooper, John Holland ("Holland"), sent a letter to the plaintiff to notify her that the "Governing Body, on the recommendation of the Medical Staff, has approved your reappointment to the Associate Active Medical Staff

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for the next year." (Def. Mem. Supp. Summ. J. at Ex. 18). Holland also stated that the plaintiff's "privileges have been delineated by the Credentials Committee as you recently requested and are on file in the Medical Staff Services Office." *Id.* Additionally, the letter reiterated the fifty percent (50%) attendance and the twenty-four (24) patient contact requirements, which the plaintiff had to meet in order to remain in good standing. *Id.*

The volley of correspondence continued between plaintiff and the hospital when the plaintiff responded to Holland's August 19, 1996 letter by reasserting that she had only agreed to a twelve (12) patient contact requirement and sought further advice. (Def. Mem. Supp. Summ. J. at Ex. 17). Melin responded to the plaintiff on September 3, 1996, and reiterated the terms of her reappointment and explained that the plaintiff would be evaluated in August of 1997 to be sure she met the Associate Active staff requirements. *Id.* The plaintiff then appealed the hospital's decision denying her request to obtain staff privileges with only a twelve (12) patient contact requirement by a letter dated September 17, 1996. (Def. Mem. Supp. Summ. J. at Ex. 19). Following the plaintiff's written notice of appeal, the hospital took the position that the plaintiff was not entitled to a fair hearing pursuant to the bylaws because no adverse action was taken against her. *Id.* In the same letter, Holland suggested that if the plaintiff were requesting a change in the bylaws she should submit that request to the Medical Executive Committee. *Id.* The plaintiff followed Holland's suggestion and submitted an amendment to the bylaws requiring general ophthalmologists to have at least twelve (12) patient contacts in a year, which was ultimately defeated.

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JP

After a ten (10) month lull in the letter writing campaigns, the plaintiff was notified, by a letter dated September 16, 1997, that she did not meet the requirements of either the active or courtesy staff so she could only be reappointed to the consulting staff. (Def. Mem. Supp. Summ. J. at 19). The plaintiff had only five (5) patient contacts from August of 1996 to August of 1997. (Yantis Depo. at 37). The consulting staff appointment notice also included a statement that the action of the Medical Executive Committee was deemed an adverse action and that the plaintiff had a right to appeal within ten (10) days. *Id.* Consulting staff does not have admitting or surgical privileges. (Pl. Aff. June 8, 1998 at ¶ 4). The plaintiff appealed the Medical Executive Committee's decision on September 18, 1997. Following the appeal process and a hearing before the Medical Review Committee, the Medical Executive Committee's decision to change the plaintiff's medical staff category to consulting staff was affirmed.

After the administrative proceedings were completed, the plaintiff brought suit against many of the defendants in the Federal District of South Carolina, Charleston Division captioned, J.Doe, M.D. v. Tenet HealthSystem Medical, Inc. and East Cooper Community Hospital, Inc., C.A. No. 2:99-0833-23. The complaint alleged federal anti-trust violations under the Sherman Act. Following full briefing and review of the record, the Honorable P. Michael Duffy granted summary judgment on behalf of the defendants finding that the plaintiff failed to establish any concerted action which resulted in a cognizable injury to competition or that the defendants acted with monopolistic intent.

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Concomitant to the privileges dispute, the plaintiff experienced difficulties with certain administrative matters supplied under her office lease. In the summer of 1994, the parent corporation of East Cooper purchased the assets of the medical association from whom she was leasing office space. The association provided administrative services to the plaintiff, which included scheduling, filing, phone answering, billing and advertising in the yellow pages. (Pl. Aff. June 8, 1998 at ¶¶ 20 & 21). In May of 1996, the association's yellow pages advertisement was published with the plaintiff's name omitted. Id. at 7. Next, in June of 1997, Tenet sought an increase in the administrative services fee and persuaded the landlord to increase the rent to fair market value based on the hospital's offer to lease the same space. Id. at 13.

Following the dismissal of the plaintiff's federal claims, the plaintiff brought suit against the defendants with numerous causes of action including: Arrangements Lessening Competition statutory provisions; Wrongful Termination of Hospital Privileges; Breach of Contract; Breach of Contract Accompanied by Fraudulent Intent; Slander; Civil Conspiracy; Unfair Trade Practices; Interference with Existing Contractual Relations; Interference with Prospective Contractual Relations; Promissory Estoppel; and Violation of South Carolina "Provider Self-Referral Act." Following discovery, the defendants moved for summary judgment on each cause of action.

The court scheduled a hearing on the defendant's motion for summary judgment and entertained arguments from the parties on July 2, 2001. Following oral arguments the court took this matter under advisement.

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II. Analysis

This court has reviewed the pleadings, the accompanying briefs, affidavits, and the arguments made by the parties. The defendants assert that summary judgment should be granted because there are no genuine issues of material fact for any cause of action promoted by the plaintiff. However, in her memorandum in opposition to the defendant's motion, the plaintiff asserts that the motion ignores critical facts and fails to take all the evidence in the light most favorable to the plaintiff. The plaintiff further asserts that the termination of her privileges had nothing to do with her professional competence.

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. *McNaughton-McKay Elec. Co. of N.C., Inc. v. Andrich*, 324 S.C. 275, 482 S.E.2d 564 (Ct. App. 1996); *Trico Surveying, Inc. v. Godley Auction Co.*, 314 S.C. 542, 431 S.E.2d 565 (1993). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *McNaughton-McKay Elec. Co. of N.C., Inc. v. Andrich*, 324 S.C. 275, 482 S.E.2d 564 (Ct. App. 1996); *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 443 S.E.2d 392 (1994); *Eagle Construction Co. v. Richland Construction Company, Inc.*, 264 S.C. 71, 212 S.E.2d 580 (1975).

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A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See SCRCP 56(c) (1989). *McNaughton-McKay Elec. Co. of N.C., Inc. v. Andrich*, 324 S.C. 275, 482 S.E.2d 564 (Ct. App. 1996), *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). *Crescent Company of Spartanburg, Inc. v. Insurance Company of North America*, 266 S.C. 598, 225 S.E.2d 656 (1976). The grant of summary judgment is appropriate only if it is clear that no genuine issue of material fact exists, that inquiry into the facts is not desirable to clarify the application of the law, and that the movant is entitled to judgment as a matter of law. *McNaughton-McKay Elec. Co. of N.C., Inc. v. Andrich*, 324 S.C. 275, 482 S.E.2d 564 (Ct. App. 1996); A party seeking summary judgment has the burden of clearly establishing by the record properly before the Court the absence of a triable issue of fact. See *Tom Jenkins Realty, Inc. v. Hilton*, 278 S.C. 624, 300 S.E.2d 594 (1983). A party who fails to show the absence of a genuine issue of material fact is not entitled to summary judgment even though his adversary does not come forward with opposing materials. *McNaughton-McKay Elec. Co. of N.C., Inc. v. Andrich*, 324 S.C. 275, 482 S.E.2d 564 (Ct. App. 1996); *Title Insurance Co. of Minnesota v. Christian*, 267 S.C. 71, 226 S.E.2d 240 (1976).

In the present case, the defendants have moved for summary judgment on each of the plaintiff's causes of action. Therefore, the defendants must establish that no genuine issue of material fact exists as to each cause of action.

8 / 33 TS

a. Arrangements Lessening Competition

Section 39-3-10 prohibits "[a]ll arrangements, contracts, agreements, trusts or combinations (a) between two or more persons as individuals, firms or corporations, made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State or in the manufacture or sale of articles of domestic growth or of domestic raw material, (b) between persons or corporations designed or which tend to advance, reduce or control the price or the cost to the producer or consumer of any such product or article and (c) between two or more persons as individuals, firms, corporations, syndicates or associations that may lessen or affect in any manner the full and free competition in any tariff, rates, tolls, premium or prices in any branch of trade, business or commerce." S.C. CODE ANN. § 39-3-10 (Law Co-op. 1985). South Carolina adheres to a policy of interpreting the state trade regulations consistent with federal precedents. *In re Wiring Device Antitrust Litigation*, 498 F.Supp. 79 (E.D.N.Y. 1980)(citing *State v. Virginia-Carolina Chemical Co.*, 71 S.C. 544, 51 S.E. 455 (1905); *South Carolina Cotton Growers' Co-Op Ass'n v. English*, 135 S.C. 19, 133 S.E. 542 (1926). See also, *Drs. Steuer and Latham, P.A. v. Nat'l Medical Enterprises, Inc.*, 672 F.Supp. 1489 (D.S.C. 1987), *aff'd* 846 F.2d 70 (4th Cir. 1988).

The defendants assert that summary judgment is appropriate on this cause of action because the doctrine of res judicata bars this claim. To bar a claim under the doctrine of res judicata, the following elements must be shown: (1) the identities of the parties are the same as the prior litigation; (2) the subject matter is the same as

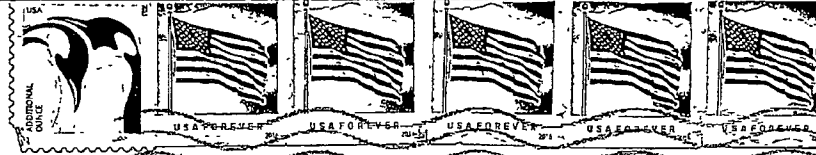
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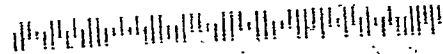
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SC Court of Appeals



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The Honorable Jenny A. Kitchings
SCCOA
1220 Senate St.
Columbia, SC 29201

C. HOLMES

P O Box 187
Sullivans Island, SC 29482
843.883.3010

24 March 2017

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MAR 27 2017

SC Court of Appeals

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Holmes v. Becker et al
App. Case No. 2017-000266
New case law from the Court of Appeals:
Charles Thomas Brooks, III, Appellant, v. South Carolina
Commission on Indigent Defense and Office of Indigent Defense,
Respondents. Appellate Case No. 2014-00247.

Dear Jenny:

We are writing to provide timely supplement as follows including, but not limited to, pertinent new case law in *Brooks v. CCCID and OID*. The previous correspondence is incorporated in full by reference.

Significantly and materially, the December 2009 order from an unrelated case is objectionable as hearsay. In *Mizell v. Glover*, the South Carolina Supreme Court found: "We find persuasive the jurisprudence developed by the Fourth Circuit and other federal

courts which have recognized that judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial. See *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993); *U.S. Steel, LLC v. Teco, Inc.*, 261 F.3d 1275 (11th Cir. 2001); *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994); *Blue Cross and Blue Shield v. Philip Morris, Inc.*, 141 F.Supp.2d 320 (E.D.N.Y.2001).[8] In *Nipper*, the Fourth Circuit held that judicial findings constitute hearsay and do not fall within any of the exceptions to the hearsay rule, including the exception for public records, Rule 803(8), FRE. *Nipper*. The Fourth Circuit made clear that its holding was firmly rooted in the common law. *Id.* (Citing 5 John H. Wigmore, *Wigmore on Evidence* § 1671a (James H. Chadbourne rev.1974) (citations omitted)).” *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002).

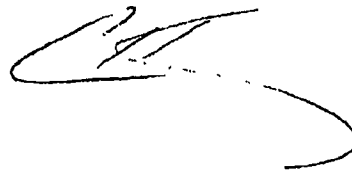
“The federal courts addressing this issue point to the great weight and obvious prejudicial effect that credibility assessments of witnesses by judges have on subsequent juries. See *Philip Morris*, 141 F.Supp.2d 320 (denying admission of a judge's statement regarding credibility of expert witness for impeachment of that expert at a subsequent trial). Although *Philip Morris* involved the credibility assessment of a judge and not the assessment of a jury, the jury's factual finding introduced in this case is hearsay nonetheless, and we believe, is equally prejudicial. See *U.S. Steel v. Teco* (finding appellants were prejudiced by the admission of a previous judge's factual opinion into a subsequent trial because appellees relied on the opinion throughout the trial and advised the jury during closing argument to use the opinion to make their own credibility

determinations).” *Mizell v. Glover*, 351 S.C. 392, 570 S.E.2d 176 (S.C. 2002). Extrinsic material from unrelated matter then stayed pending appeal and later superseded on appeal is hearsay and, therefore, inadmissible. The Appellant is prejudiced by denial of meaningful opportunity to be heard including, but not limited to, denial of the statutory and case law right to object to false, unverified petition which is fatally flawed, which is not itemized, and which wrongfully fails to comply with legal interest.

Moreover, from the *Brooks* case, the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, “All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.” A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) (“[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.”); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

In sum, Appellant respectfully submits the requested information. Please do not hesitate to contact us with any questions. Thanking you for your kind consideration, I remain

Yours very truly,

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be the initials 'JH' followed by a long, sweeping horizontal stroke.

cc
Opposing counsel
1201 Main Street
Columbia, SC 29201

DURST FAMILY MEDICINE, P.C.

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(843) 883-3176

MAR 27 2017

(843) 883-3459

SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Appellate Case No. 2017-000266

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MAY 08 2017

SC Court of Appeals

C. Holmes,

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

**RESPONDENTS' RESPONSE IN OPPOSITION
TO HOLMES' MOTION TO REINSTATE**

Respondents Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier and James Y. Becker (collectively, "Respondents") submit this memorandum in response to the "Amended Notice of Appeal" filed by plaintiff Cynthia Holmes ("Holmes") on April 21, 2017, which the Court has stated that it will treat as a Motion to Reinstate Holmes' Appeal (the "Motion to Reinstate").

Background

On April 6, 2007, Holmes commenced this malpractice action against Respondents arising from litigation against East Cooper Community Hospital (“East Cooper”) after the revocation of Holmes’ medical staff privileges at the hospital. Holmes’ claims against the Respondents were dismissed in their entirety after protracted litigation, and the trial court issued an order of sanctions against Holmes in the amount of \$200,000.00 (the “Judgment”). The Judgment was affirmed by the South Carolina Supreme Court on June 4, 2014. *See Holmes v Haynsworth Sinkler & Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

During the pendency of the litigation between Holmes and the Respondents, the South Carolina Supreme Court directed the Clerks of Court in South Carolina to refuse to accept any further filings from Holmes that were related in any way to the revocation of her medical staff privileges at East Cooper unless the documents were filed by an attorney, other than Holmes, who was licensed to practice law in South Carolina. (*See* Order, entered in *Doe v. Duncan*, No. 2008-UP-596, (Dec. 2, 2009), a copy of which is attached as **Exhibit 1**.) Holmes’ license was later suspended for a period of two years. *See In re Collie*, 410 S.C. 556, 569, 765 S.E.2d 835, 841 (2014). As of the date of filing this memorandum, Holmes has not been reinstated.

In November 2016, the Respondents commenced formal efforts to collect the Judgment. Respondents filed a Verified Petition on January 3, 2017, to commence supplementary proceedings to determine whether Holmes has assets to apply toward satisfaction of the Judgment. On January 18, 2017, the Court issued a Rule to Show Cause, requiring Holmes to produce certain documents and appear, and a hearing was scheduled for March 10, 2017.

In the meantime, Holmes filed two motions for sanctions, a Rule 59(e) motion, a Rule 60 motion, and a motion to dismiss, all of which attempted to set aside the Judgment and claim that

Respondents acted fraudulently in trying to collect the Judgments. Holmes signed each of these motions herself, without another attorney. On February 9, 2017, the Court of Common Pleas for Charleston County entered an order striking all of Holmes' motions, due to the December 2009 Supreme Court order. Holmes subsequently filed a notice of appeal on February 19, 2017, appealing the order. This Court dismissed Holmes' appeal on April 7, 2017, finding that her *pro se* filings were all related to the East Cooper litigation. Holmes now attempts to once again resurrect the malpractice action arising from the East Cooper litigation by having the Appeal reinstated. Her Motion to Reinstate attempts to appeal two orders: The February 9, 2017 order rejecting her filings in Charleston County, and a March 14, 2017, order from the Master in Equity for Charleston County requiring her to produce financial information requested as part of the supplemental proceedings.

Argument

First, as recognized by this Court in its Order filed on April 7, 2017, the original appeal should never have been accepted because it clearly related to the East Cooper litigation. Accordingly, the only notice of appeal at issue is the Amended Notice of Appeal served on April 21, 2017, which was signed by an attorney, but it is untimely. The South Carolina Appellate Court Rules clearly provide that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order of judgment.” Rule 203(b)(1), SCACR. Moreover, courts interpreting this rule have unequivocally held that it is jurisdictional, and that “if a party misses the deadline [to serve the notice of appeal], the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.” *USAA Prop. And Cas.*

Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004)).

Here, the Amended Notice of Appeal was served on April 21, 2017, which is well beyond the thirty day deadline Holmes had to appeal the February 9th order. Moreover, the parties received notice of the court's March 14th order on March 20, 2017, which would have made the deadline to serve a notice of appeal from that order April 19, 2017. Therefore, the Amended Notice of Appeal served on April 21st was untimely, and the Court should deny Holmes' Motion to Reinstate.

Second, both of the orders at issue are un-appealable interlocutory orders and, accordingly, any appeal based on those orders should not be reinstated. The law is well-settled that "[t]here are only four basic situations from which a party may appeal: (1) intermediate judgments, orders or decrees involving the merits, (2) orders affecting substantial rights when such orders in effect determine the action and prevent a judgment from which an appeal may be taken or when the orders discontinue the action, (3) a final order in special proceedings, and (4) interlocutory orders continuing, modifying, or refusing injunctions." *Crout v. South Carolina Nat'l Bank*, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982).

Here, the Circuit Court orders Holmes seeks to appeal do not fall under any of the appealable categories, as neither of them terminate the litigation, purport to be a final order in a special proceeding, or concern any injunction. Moreover, the only matter before the Circuit Court is Respondents' Rule to Show Cause, the purpose of which is to determine whether Holmes has assets to apply toward satisfaction of the Judgment. None of Holmes' motions giving rise to the February 9, 2017 order, however, relate in any way to the Rule to Show Cause, but instead attempt to re-litigate the underlying malpractice action and frustrate Respondents'

attempts to collect on the Judgment. As a result, the orders are un-appealable, and this Court should deny Holmes' Motion to Reinstate.

Third, Holmes has not and cannot demonstrate that good cause exists to reinstate her appeal. SCACR Rule 260 notes that a case may only be reinstated "by leave of the court, upon good cause shown, after notice to all parties." Rule 260(a), SCACR. Here, Holmes has failed to state, much less demonstrate, that good cause exists to reinstate her appeal. As stated above, Holmes has been prohibited from submitting for filing any documents related to the East Cooper litigation since 2009. For almost eight years, then, Holmes has been aware that she would need an attorney to sign any pleadings, motions, or other court filings related to the East Cooper litigation, yet she still refused to retain an attorney to sign her original notice of appeal. Such a refusal was a direct violation of the Supreme Court's 2009 order. Accordingly, Holmes has not properly demonstrated that good cause exists to reinstate her appeal and this court should deny her Motion to Reinstate.

Conclusion

For the aforementioned reasons, Respondents request that this Court deny Holmes' Motion to Reinstate the Appeal, and grant such other and further relief as may be just and proper.



Mary M. Caskey, SC Bar No: 76198
Mary Cothonneau Eldridge, SC Bar No: 102698
Haynsworth Sinkler Boyd, P.A.
Post Office Drawer 11889
Columbia, South Carolina 29211
Telephone: (803) 779-3080
(803) 765-1243 (fax)

ATTORNEYS FOR RESPONDENTS

May 8, 2017
Columbia, South Carolina

The Supreme Court of South Carolina

J. Doe,¹

Petitioner,

v.

Richard L. Duncan, Meredith
Bond, Sidney Gilreath and
Gilreath & Associates,

Respondents.

ORDER

Petitioner has filed a petition for a writ of certiorari seeking review of the Court of Appeals' decision in Doe v. Duncan, Op. No. 2008-UP-596 (S.C. Ct. App. filed Oct. 17, 2008). The petition is denied.

However, this action is just one in a number of frivolous actions petitioner has filed relating to the revocation of her medical staff privileges at East Cooper Community Hospital *in 1997*.² Because we find petitioner has

¹ It is unclear why petitioner was allowed to proceed anonymously in this action. We note further that petitioner has at various times in other actions gone by the name Cynthia Holmes and Cynthia Collic. In order to avoid any confusion, we point out that J. Doe, Cynthia Holmes and Cynthia Collic are one and the same.

² A circuit court judge presiding over one of petitioner's lawsuits, found the following in a recent order imposing sanctions on petitioner:

Throughout the history of this case, Dr. Holmes has proven herself to be profoundly litigious. Since being assigned to Courtesy Staff at East Cooper Hospital in 1997, Dr. Holmes engaged in a lengthy, albeit fruitless, administrative appeal of the

Hospital's decision. She then sued the Hospital in federal court, and failing there, in state court. She sued Mr. Becker and Mr. Grier and their law firm over the handling of the federal case. She sued two Tennessee lawyers in both South Carolina and Tennessee state courts over their role in achieving a settlement of her state court case against the Hospital. In 2005, Dr. Holmes sued the Hospital in a second action, alleging a wide array of complaints against the Hospital and several physicians, the gist of which was that the Hospital continued to refuse to increase her level of privileges. In Dr. Holmes' 2005 case against East Cooper Hospital, which the Court deemed to be barred by her settlement of the 2000 case, the Court imposed a \$90,000 sanction for violation of the [South Carolina Frivolous Proceedings] Act. In each of the cases Plaintiff has filed *pro se* since settling her 2000 state court case against East Cooper Hospital, Plaintiff has asserted baseless and frivolous claims for which she lacked any evidentiary support. She has launched numerous pointless appeals, every one of which has been resolved in favor of the respondents. Throughout, Plaintiff has made baseless, maybe scandalous, allegations against numerous physicians and lawyers without care, and in absence of evidentiary support. Her tactics have been dilatory, vexatious, that is brought without sufficient grounds, oppressive and unreasonable.

Plaintiff[s] conduct through the case appears to have been nothing but vexatious, that is, brought without sufficient grounds, and the maintenance of this completely frivolous claim can only be characterized as unreasonable. As before, Dr. Holmes was the losing party in a lawsuit a decade ago. She has persisted in pursuing this case for nearly a decade yet has never adduced a shred of evidence that anything the Defendants did made any difference in the outcome of the federal court action about which she complains.

Clearly, Plaintiff has abused the judicial system generally, and these Defendants in particular, with her unreasonable and ill-considered frivolous lawsuit. Throughout this matter, and in her other cases, Dr. Holmes has repeatedly shown that she is unwilling and unable to evaluate the merits of her own cases, and that she is unable to present any evidence to support her claims. She has evidenced a pattern of abusing the legal process in bringing frivolous actions and the potential remains for her to continue that practice unless severe sanctions are levied against her.

engaged, and continues to engage in, vexatious litigation related to that issue, we hereby direct the Clerks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice law in this state.³

³ In addition to the above captioned action, petitioner has filed notices of appeal and petitions for a writ of certiorari in the following actions:

J. Doe v. Manton Grier James Y. Becker and Haynsworth Sinkler Boyd, P. A., as successor to Sinkler & Boyd, P. A. (2002-CP-01-1448 and 2002-CP-40-3705)

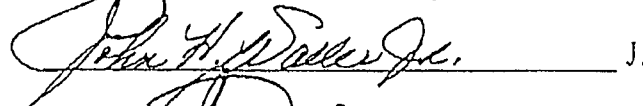
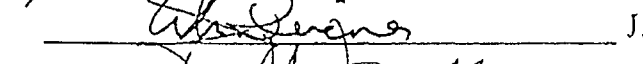
Cynthia Holmes, M.D. v. Haynsworth, Sinkler & Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker (2007-CP-10-1444)

Cynthia Holmes, M.D. v. East Cooper Community Hospital, Inc.; Tenet Healthsystem Medical, Inc.; John Grady, M.D.; Paul Yantis, M.D. (2005-CP-10-5113)

The latter action is now pending in this Court. Only the appeal at issue has resulted in the issuance of an opinion by the Court of Appeals. The remaining appeals were dismissed by order of the Court of Appeals prior to the issuance of an opinion because the appeals were interlocutory. We note that in these matters, petitioner has filed numerous frivolous motions, indicating her lack of knowledge of or complete disregard for the appellate process.

We also note that petitioner has recently been sanctioned in two of these matters (2005-CP-10-5113 and 2007-CP-10-1444) by the circuit court. By order dated July 27, 2009, the circuit court ordered petitioner to pay \$90,000 in attorney's fees to opposing counsel based on her frivolous initiation and continuation of the proceeding. By order dated November 18, 2009, the circuit court, as noted in footnote 1 above, sanctioned petitioner and entered judgment against her in the amount of \$200,000, noting the amount was not as much as was justified by the facts.

IT IS SO ORDERED.


C. J.

J.

J.

J.

J.

Columbia, South Carolina

December 2, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9TH Judicial Circuit Court Judge

Case No. 2007-CP-10-1444
Appellate Case No. 2017-000266

RECEIVED

MAY 08 2017

SC Court of Appeals

C. Holmes,

Appellant,

v.

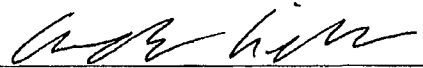
J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that on May 8, 2017 a copy of the foregoing **Respondents' Memorandum in Opposition to Holmes' Motion to Reinstate** has been served upon the Appellant by placing the same in the United States mail to the following party:

Chalmers C. Johnson
1029 Bay Street, #7
Port Orchard, WA 98366
Attorney for Appellant


Amanda Willoughby
Haynsworth Sinkler Boyd, P.A.

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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MARY COTHONNEAU ELDRIDGE
DIRECT DIAL NUMBER 803 540 7708
meldridge@hsblawfirm.com

May 8, 2017

VIA HAND DELIVERY

Jenny Abbot Kitchings
Clerk of the SC Court of Appeals
1200 Senate Street
Columbia, SC 29201

RECEIVED

MAY 08 2017

SC Court of Appeals

RE: *Cynthia Holmes v. Haynsworth Sinkler Boyd, et al.*
Appellate Case No. 2017-000266
HSB File: 04625.1439

Dear Ms. Kitchings:

With regard to the above-referenced matter, enclosed for filing please find the original and seven copies of Respondents' Memorandum in Opposition to Holmes' Motion to Reinstate, along with a Proof of Service. Please date-stamp the enclosed extra copy and return via our courier.

Sincerely,



Mary Cothonneau Eldridge

MCE/ajw

cc: Chalmers C. Johnson, Esq (via U.S. Mail)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

Case No. 2007-CP-10-1444

Cynthia Holmes,
Appellant,

v.

James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

Petition for Rehearing

RECEIVED

JUL 12 2017
SC Court of Appeals

Chalmers C. Johnson
1155 Bethel Ave.
Port Orchard, WA 98366
425.999.0900
Attorney for Appellant

By and through counsel, appellant respectfully files Petition for Rehearing of the Order entered June 26, 2017, and respectfully submits that the Court has overlooked or misapprehended the following errors of material fact and law.

Facts

The Appellant contends that the Court has overlooked material facts in making its determination on the Order of June 26, 2017. The lower court order entered March 14, 2017, was timely appealed by notice of appeal filed and served by Attorney for the Appellant on April 21, 2017. Written notice of the lower court order entered March 14, 2017, was postmarked on March 16, 2017, and received on March 24, 2017. Attached to this petition are the amended notice of appeal and an affidavit regarding dates of receipt and service by the Appellant. Accordingly, pursuant to Rule 203, SCACR, the notice of appeal was timely served within 30 days after receipt of written notice of entry of the order. The Court or the Clerk apparently decided to treat the amended notice of appeal as a motion to reinstate and the grounds for the original dismissal were not absolutely clear.

I. The order is appealable under S.C. Code Section 14-3-330(1).

The order is appealable under S.C. Code Section 14-3-330(1) because it involves the merits. An order “involving the merits” is one that “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.”

Mid-State Distributors, Inc., v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993). In the case below, the appellant is denied any defense or ability to file objections thereby “necessarily affecting the judgment.” *Link v. School District of Pickens Cty.*, 302 S.C. 1, 393 S.E.2d 176 (1990).

II. The Order is appealable under S.C. Code Section 14-3-330(2).

The order is appealable under S.C. Code Section 14-3-330(2)(a) because it affects a substantial right when such order “in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” In this case, the Appellant is effectively foreclosed from contesting the case on the merits in the Circuit Court because the Court will not recognize her filings, which affects a substantial right and is immediately appealable. *McLaughlin v. Strickland*, 279 513, 309 787 (Ct. App. 1983).

The order is appealable under S.C. Code Section 14-3-330(2)(c) because it affects a substantial right when such order “strikes out an answer or any part thereof or any pleading in any action.” This case involves striking any and all pleadings, answers, and/or defense, therefore, there is no record for meaningful judicial review on appeal

necessarily preventing any substantial ability to appeal. The Order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

III. The Order is appealable under S.C. Code Section 14-3-330(3).

The order is appealable under S.C. Code Section 14-3-330(3) which allows appellate review of orders affecting a substantial right “made in any special proceeding or upon a summary application in any action after judgment.” In the instant case, the lower court proceeding is not a traditional action. It is a “special proceeding.” *See Allen v. Partlow*, 3 S.C. 417 (1872). Denial of the right to defend and to file affects a substantial right in this special proceeding. The Order is appealable.

IV. The order is appealable under S.C. Code Section 14-3-330(4).

The order is appealable under S.C. Code Section 14-3-330(4) because it is an interlocutory order or decree ... “granting, continuing, modifying, or refusing the appointment of a receiver.” S.C. Code Section 14-3-330(4). The March 14, 2017, order provides “thereafter a receiver will be appointed.” March, 14, 2017, Order on appeal. Accordingly, the order is appealable under S.C. Code Section 14-3-330(4). *See Williams v. Northwestern Securities Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992).

V. Pursuant to Rule 205, SCACR, the appellate court obtains exclusive jurisdiction upon the timely service of the notice of appeal.

The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as

follows:

[T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et al.*, *Appellate Practice in South Carolina* (3d ed. 2016), p. 11. The instant matter is a direct appeal. Under Rules 205 and 241, SCACR, the lower court may not act or issue orders that affect an issue on appeal. In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. S.C. Code Section 14-3-330(2); see *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

New case law in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, “All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.” A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) (“[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own

cause, if he so desires.”); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

VI. The money judgment exception to automatic stay does not apply because the matter herein does not constitute a “money judgment” in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental to the underlying claim.

The money judgment exception to automatic stay does not apply because the matter herein does not constitute a “money judgment” in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental to the underlying claim. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition (2016), p. 341. In the instant case, the underlying claims ended with directed verdict for the defendants. Significantly and materially, there was no counterclaim. Accordingly, the matter herein is not a traditional money judgment and, therefore, it is subject to automatic stay under Rule

241(a), SCACR. Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition (2016), p.

340. In the alternative, any dispute regarding the application of automatic stay is resolved in the appellate court. *See Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

VII. The lower court's reliance on the December 2009 order is not only clearly misplaced, but the result is a violation of State and federal statutory and Constitutional law.

The Court's Order that Appellant is challenging has restricted her from filing any motions on her own behalf in an action where she is defending pro se. The action is basically a supplemental proceeding to collect a judgment against her. The judgment arises from a sanction ordered in a case where she sued the Respondent for malpractice in handling a legal case for her in Federal Court. The Order under appeal stated:

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: A supplemental proceedings hearing is scheduled to take place in this matter on March 10, 2017. The court is advised by the Clerk of Court's office that Cynthia Holmes, M.D., has filed several motions in this matter in violation of the Supreme Court's order filed December 3, 2009 directing the "Clarks of Court in this state to refuse to accept further filings from petitioner in actions related in any way to the revocation of her medical staff privileges at East Cooper Community Hospital unless they are filed by an attorney, other than petitioner, licensed to practice of law in this state." Given the broad language of this directive and the fact that the motions have been filed by Dr. Holmes, pro se, the court orders the Clerk of Court's office to strike all motions filed by Dr. Holmes in this matter as well as all future motions, if any.

ORDER INFORMATION

The language of the Order itself shows the fallacy of the basis for the decision. The

Judge notes “broad language” of a 2009 Order, but quotes that very language, which is anything but broad. On its face, the 2009 order only applies in cases where Dr. Holmes is engaged in litigation related to revocation of medical privileges at East Cooper Hospital. The Order that she is attempting to appeal arises out of supplemental proceedings to collect on a judgment from a malpractice case which did not involve East Cooper as a party. This order, on its face, seems to invite review rather strongly.

There is also new case law in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, “All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.” A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) (“[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.”); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

VIII. When deciding a jurisdictional question based on facts, a reviewing court has the duty to review the entire record and find the jurisdictional facts within the entire record.

When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). It is not clear that there was an adequate record to make a finding on the jurisdictional question.

Conclusion

The Appellant respectfully requests that the Court reconsider its Order of June 26, 2017 and reinstate this appeal. It raises some serious issues regarding the rights of Pro Se parties, which the Court should review.

Respectfully submitted,



Chalmers C. Johnson
1155 Bethel Ave.
Port Orchard, WA 98366
425.999.0900
Attorney for Appellant

7-10-17

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017 - 000266
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

AMENDED NOTICE OF APPEAL

The Appellant appeals the attached orders of the 9th Judicial Circuit Judge entered February 9, 2017, and March 14, 2017. Pursuant to Rule 203 and 206. The original notices of appeal in this case were timely filed. The rulings of February 9 and March 14 denied the Appellant the right to participate, pro se, in her own case and order proceedings to continue against her after dismissing all of her attempts to file pro se. This appeal will include reference to *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017), *Turner v. Rogers*, 564 U.S. 431 (2011), and *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) (see Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition, 2016).

Dated April 21, 2017



Chalmers C. Johnson
1029 Bay Street, #7
Port Orchard, WA 98366
(425) 999-0900
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017 - 000266
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

J. Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to M.M. Caskey on this date at 1201 Main St., 22nd flr., Columbia, SC 29201.

Dated April 21, 2017



Chalmers C. Johnson
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

App. Case No. 2017 - 000266
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C. Holmes,

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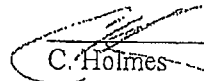
AFFIDAVIT

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF CHARLESTON)

Personally came and appeared before me, Notary Public, C. Holmes, who upon being duly sworn did depose and say the following:

- a. I am the appellant and this affidavit is submitted in support of the amended notice of appeal and in opposition to the return.
- b. The appellant respectfully disputes *pro se* defendant's return.
- c. Specifically, written notice of entry of the March 14, 2017, order was postmarked March 16, 2017. See attached copy of the postmark.
- d. Written notice of entry of the March 14, 2017, order was received on March 24, 2017.
- e. Accordingly, the amended notice of appeal served and filed on April 21, 2017, was timely.
- f. In addition, the amended notice of appeal relates back to the original notice of appeal timely served.
- g. Pursuant to Rule 203(b), (d), SCACR, serving and filing are two separate acts. Service herein was timely thereby vesting jurisdiction in the appellate court. Toal *et al*, *Appellate Practice in S.C.*, (2016), p. 289.
- h. Pursuant to Rule 263(b), SCACR, the filing of the notice of appeal may be extended. *Pro se* defendants have acknowledged timely service of notice of appeal. There is no legal prejudice and *pro se* defendants have claimed none. The return fails to even address new case law and controlling precedent in *Brooks*. The appellant is prejudiced including, but not limited to, denial of State and federal constitutional rights and denial of opportunity to establish *pro se* defendant's violation of legal interest. *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

FURTHER THE AFFIANT SAITH NOT.


C. Holmes

Subscribed and sworn to before me,
Notary Public, this 12 day

of May, 2018. 7 

Elizabeth G. Anderson

NOTARY PUBLIC

My commission expires: 4/4/23

PRESORTED
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

Case No. 2007-CP-10-1444

Cynthia Holmes,

Appellant,

v

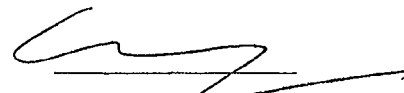
James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondents on this date at 1201 Main St., 22nd flr., Columbia, SC 29201, addressed to their attorney of record, Ms. Mary M. Caskey, Esq.

Dated 7-10-17



Chalmers C. Johnson
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SC Court of Appeals

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July 10, 2017

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Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

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Re: Holmes v. Haynsworth et al
App. Case No. 2017-000266

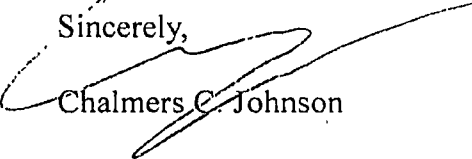
Dear Clerk of Court:

Enclosed for filing is the original with abeyance request in the above case. Also, enclosed are the following:

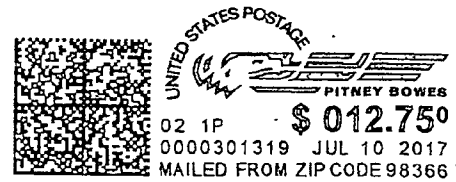
- 1) The filing fee,
- 2) Seven copies,
- 3) Proof of Service and a copy, and
- 4) SASE for return.

Would you please file the original and copies and return the extra clocked copies to me in the enclosed envelope? Thank you.

Sincerely,


Chalmers C. Johnson

cc:
Ms. Mary M. Caskey, Esq.
1201 Main St., 22nd flr., Ste 2200
Columbia, SC 29201



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